

Chapter 9: The NPS Implements the Legislation

Implementation

One effect of the legislation was that it forced the NPS into the unfamiliar and often complicated realm of the economics of commercial fishing. The Glacier Bay legislation stipulated that the Secretary of the Interior was to determine eligibility for Lifetime Access Permits (LAPs) as well as do the potentially complicated calculations to determine income earned by Dungeness crab fishermen who considered themselves entitled to more than \$400,000 in compensation. The Alaska Department of Fish and Game, of course, could have helped, but viewed this as an unwanted problem that the NPS had itself created. So far as ADF&G was concerned, the NPS was on its own.

In short order, the NPS had to establish a mechanism for the buyout of Dungeness crabbers and determine a fair formula to award LAPs in the halibut, troll salmon and Tanner crab fisheries. Because Dungeness crab fishing interests were very involved in shaping the buyout, Senator Stevens's legislation on the Dungeness crab fisherman buyout was specific. The buyout process, though it required the services of accountants familiar with the fishing industry, was fairly straightforward. The legislation, however, was not specific on how LAPs might be awarded, except that the eligibility criterion was limited to "qualifying years which shall be established by the Secretary of the Interior."⁸⁴² Under the standard rulemaking process, the secretary would establish a timeframe as the basis for receiving LAPs. Within this timeframe a fisherman would have to document a specified minimum number of years of participation in a grandfathered fishery to be eligible for a LAP.

The NPS had some unfinished business to attend to. The public comment period for the April 1997 proposed rule was still open when the Glacier Bay commercial fishing legislation became law. (The legislation was signed on October 21; the public comment period on the proposed rule stayed open until November 15.) Some elements of the proposed rule were made moot by the legislation. Others—though second-tier issues—remained to be addressed.

In light of this, the NPS on December 11, 1998 "re-opened" the public comment period on a modified version of the original proposed rule. The modified version conformed to the statutory changes made by the October legislation. The NPS sought public comment and ideas on new and pressing business (the criteria that should be used to establish appropriate eligibility requirements for LAPs), and relatively old business (the cooperative management of Glacier Bay N.P.'s fisheries by the state and NPS, appropriate marine research projects, and the development of a Hoonah Tlingit cultural fishery).^{AAAAA} At the time of this reopening, the NPS had already received more than 1,300 public comments on the proposed rule and environmental assessment (EA). Comments were originally scheduled to be accepted until January 15, 1999, but the comment period was extended until February 1 because of requests and a delayed mailing of the *Federal Register* package.⁸⁴³ This was the fourth extension of the public comment deadline for the proposed rule.⁸⁴⁴

Six Dungeness crab fishermen were eligible to be bought out. Of these, only Tom Traibush and Charlie Clements elected to claim compensation greater than \$400,000. Lacking in-house expertise and to ensure impartiality, the NPS contracted with Mikunda, Cottrell & Co., an Anchorage accounting firm experienced with fisheries to review the financial statements necessary for the buyouts.

Thanks to Senator Stevens, the firm would have to employ some non-traditional accounting to do its job. While the legislation that provided for the buyouts was written in a straightforward manner, Stevens's statement on the Senate floor about how expenses were to be calculated for those who might elect to have their lost income replaced complicated the issue.

Depreciation is considered an expense in standard accounting practice. When calculating a Dungeness crab fisherman's income, Senator Stevens, however, stated that "Paper losses such as depreciation used for Internal Revenue purposes only, should not be subtracted in calculating net income."⁸⁴⁵

^{AAAAA} The idea of a Hoonah Tlingit cultural fishery never really took hold with the NPS or in Hoonah, and is not actively being pursued.

Such accounting would inflate a fisherman's income substantially. On the advice of Mikunda, Cottrell, Chief Ranger Randy King, who was in charge of administering the Dungeness buyout program, instructed that standard accounting practice be used, that depreciation be considered an expense. Shortly thereafter a terse letter from Stevens reaffirmed his instructions on the issue, and King instructed the accountants to use the senator's definition of net earnings.⁸⁴⁶ Tom Traibush was the greatest beneficiary of this non-traditional accounting, and Senator Stevens's directive became informally known as the "Traibush Amendment."

Just as fishermen can be phased out, regulations can be phased in. The first significant opportunity the NPS would have to enforce October's legislation was the 6-day Tanner crab season that began on February 15, 1999. Although no official rules had been published, the NPS had the authority to immediately begin enforcing the new law, which closed some traditional Tanner crab grounds to commercial fishing (see Figure 35). Chief Ranger Randy King, however, chose to use the opening as an opportunity to educate fishermen.⁸⁴⁷ He had the support of Superintendent Tomie Lee, who said "I'm very sold on the idea, with major changes, that we do go through a period of education wherever it is possible ... I don't believe in dropping things on people."⁸⁴⁸

King outlined the Tanner crab education (and monitoring) effort. Fundamental to the effort was the establishment of an enforcement presence by the NPS. Rangers would contact and board as many vessels as possible to check for fisheries compliance and inform fishermen about the changes made by the October legislation. Closed areas would be targeted, and vessels fishing in those areas would be asked to leave voluntarily. Non-compliance would be documented, but the NPS had no intention of issuing violation notices for fishing in closed waters. Rangers would also document who was fishing in Glacier Bay, where they were fishing, and on which vessel.⁸⁴⁹

The standard procedure for boarding a commercial fishing vessel by NPS rangers was as follows: "The Park vessel stands off until radio contact is made with the captain of the fishing vessel and the request to approach and board is acknowledged. If the fishing vessel

is involved in hauling traps/fishing gear, the Park vessel will stand off until that activity is completed before attempting to make contact via radio (see Figure 36). This is to minimize the disruption to the fishing operations of the vessel."⁸⁵⁰ This procedure was followed during the 1999 Tanner crab season. NPS regulations require that rangers on patrol be armed.

About 14 to 25 vessels typically fished Tanner crab in Glacier Bay during this period. During the 1999 season NPS rangers saw only 14, of which 13 were boarded (see Figure 37). "About three" vessels were boarded in closed waters, all of which moved their gear (crab pots) out within a day.⁸⁵¹ Although one of the fishermen who had been boarded (not in a closed area) was "angry or upset," it seemed to have been a pretty uneventful six days of business as usual.⁸⁵²

Two days after the season closed an article titled "Glacier Bay Crabbers Unexpectedly Ousted" appeared in the *Juneau Empire*. A similar article appeared in the *Petersburg Pilot*.⁸⁵³ In the articles, Jon Place, who fished Tanner crab on the vessel *Emily Nicole*, recounted being boarded by NPS rangers in Charpentier Inlet, where he had just set his gear. According to Place, the rangers informed him that he was fishing in closed waters, and that when he pulled his gear, it would have to be moved. Place showed them the ADF&G regulatory information for the Tanner crab fishery, which did not show the area as being closed. Place did move his gear, but claimed that doing so cost him and his crew about \$30,000 in gross revenue. Ken Eichner, owner of the vessel, said "We definitely felt we were given a warning to remove our gear or we'd be in violation of federal law." He added that, "They have a person with a gun, with some authority. The people in the (ranger) boat are taking evidence with a camera. They're circling the boat taking movies of it. They interviewed the crew." He didn't believe they had any option other than to move the gear.⁸⁵⁴

Whether they had read about the crabbers in the newspaper or had been informed directly, Alaska's Congressional delegation did not portray the boardings as business as usual. Senator Stevens said they were "almost unheard-of and show[ed] an overzealousness" on the part of the NPS.⁸⁵⁵ His rhetoric was mild in comparison to that of Senator Murkowski and Representative Young. Murkowski accused the NPS of "outright piracy," and he claimed "the

Commercial Fishing

Public Law 105-277, as amended.

Glacier Bay National Park and Preserve
National Park Service
U. S. Department of the Interior

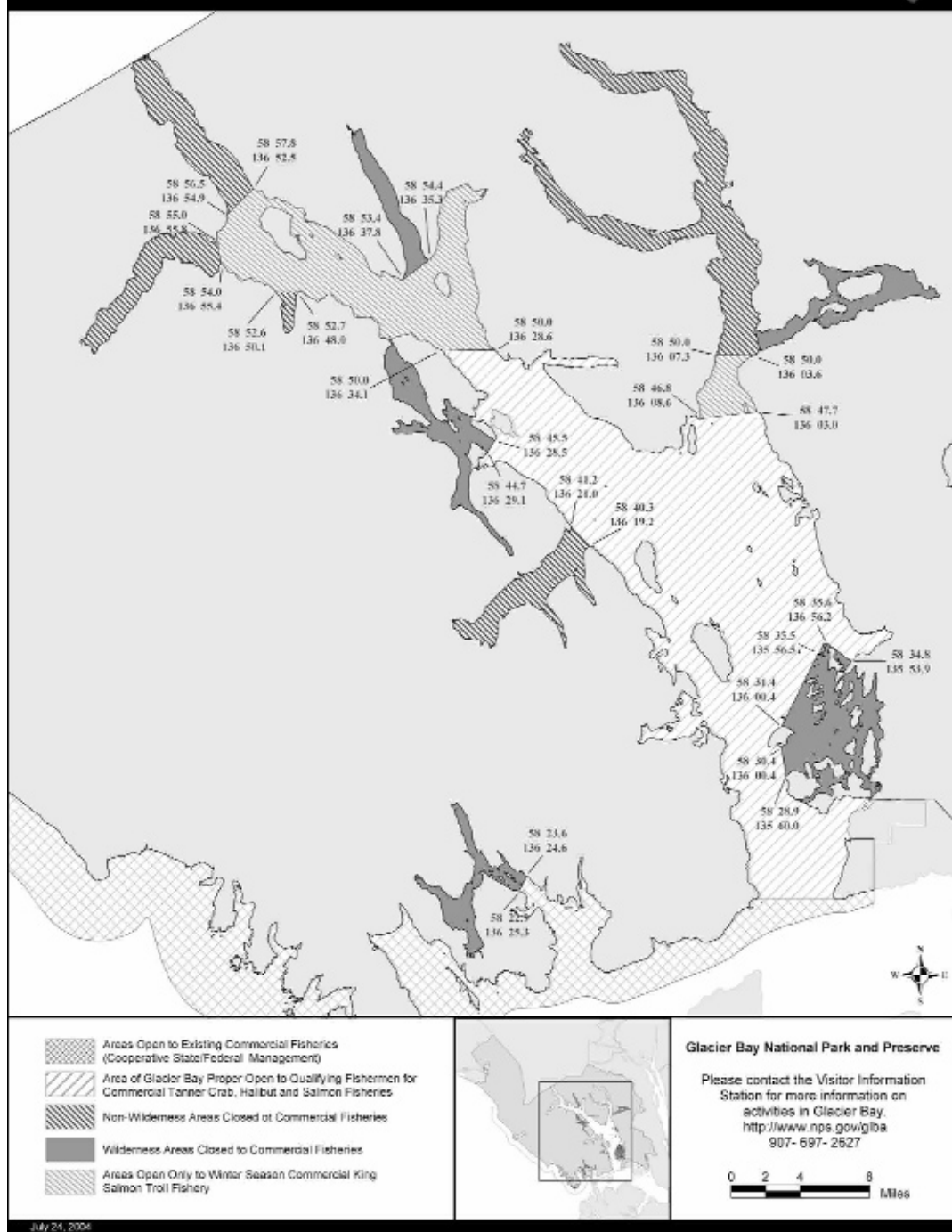


Figure 35: Public Law 105-277 closed some areas of Glacier Bay to commercial fishing, restricted fishing in others, and left non-Glacier Bay proper waters open to existing fisheries.

boats likely lost thousands of dollars because of the lost fishing opportunities during the brief winter tanner crab season.” Young charged the NPS with being “out of control,” and “nothing more than a puppet for the national environmental organizations.”⁸⁵⁶

The claims and accusations of Alaska’s Congressional delegation had no merit. They were soon rebutted by Gerry Merrigan, director of the Petersburg Vessel Owners Association.^{BBB} Merrigan said that the rangers were

“polite and professional,” and added that “no fisherman likes the boardings, but the Park Service has done them for years to check licenses and gear.”⁸⁵⁷ As Senator Murkowski pointed out, however, it would have been very easy for the NPS to have sent all of Southeast Alaska’s Tanner crab fishermen a letter prior to the season explaining the new law and showing the closed areas on a map.⁸⁵⁸

In a March 11, 1999 news release, Glacier Bay Superintendent Tomie Lee stated that the

^{BBB} Some 46 percent of southeast Alaska’s Tanner crab permits were based in Petersburg.



Figure 36: Tanner crab fishermen hauling pots in Glacier Bay, with NPS ranger patrol waiting to board. (NPS collection, Bartlett Cove, Alaska)



Figure 37: NPS ranger and fisherman discuss Tanner crab fishery. (NPS collection, Bartlett Cove, Alaska)

NPS did not intend to implement the closures and restrictions required under the previous fall's legislation until adequate notice had been provided to fishermen. She expected the closures and restrictions to be implemented over the course of the summer.⁸⁵⁹

Apparently Alaska's Congressional delegation was reluctant to give up on its grossly inaccurate rhetoric regarding the Tanner crab boardings, because in March 1999 it—including Senator Stevens—attempted to undermine some of the compromise negotiated

between Senator Stevens and the DOI less than five months earlier. It also tried to penalize the NPS for the actions of its purportedly out-of-control, overzealous, and piratical rangers at Glacier Bay. On March 2, Senators Murkowski and Stevens introduced the “Glacier Bay Fisheries Act” (S. 501). Under this legislation—which Murkowski had been threatening to introduce since the previous October—all fishing in Glacier Bay N.P., save Dungeness crab in the Beardslees and Dundas Bay, would have been permitted. Additionally, in retribution for the trumped-up harassment of Tanner crab fishermen in February, the legislation authorized the Secretary of the Interior to pay up to \$2,000,000 per year to fishermen in Glacier Bay N.P. who suffered losses because of interference by federal agents.⁸⁶⁰ Representative Young introduced an identical companion bill (H.R. 947) in the House on the same day.⁸⁶¹ In preparing a response to this legislation, the NPS considered that it could conceivably find itself responding to lawsuits by fishermen seeking compensation—including punitive damages—for time spent checking compliance with federal regulations that pertained to commercial fishing in Glacier Bay.⁸⁶² Don Barry, Assistant Secretary of the Interior for Fish and Wildlife and Parks, testified that the “proposed law would put the National Park Service in the unreasonable position of potentially paying for disturbing a fishing period while investigating other, potentially serious crimes, or while responding to other park emergencies,” such as the grounding in Glacier Bay of the cruise ship *Yorktown Clipper* in 1993.⁸⁶³

The legislation had little support in Congress and President Clinton said he would veto it if it made it to his desk. Nevertheless, Senator Murkowski held a committee hearing on the Glacier Bay Fisheries Act on April 15. Senator Murkowski and Senator Jeff Bingaman (D-NM) were the only senators present at the hearing, which was described by an NPS official who attended as “more of the same,” with Murkowski taking the opportunity to savage the NPS by characterizing the boardings of Tanner crab vessels in Glacier Bay in February as “Gestapo-type tactics.”⁸⁶⁴ While it may have given him some personal satisfaction, Senator Murkowski’s legislative effort was all

for naught. As written, the Alaska’s delegation’s Glacier Bay bill had no future.

Dismissive of the Park Service’s mandate and in apparent support of Alaska’s senators’ effort to undo most of the previous fall’s legislation, the editors of Alaska’s largest newspaper, the *Anchorage Daily News*, took up the cause of the continuance of commercial fishing in Glacier Bay. In an editorial titled “Glacier Bay: Fishing boats fit in just fine,” the *Daily News* argued that commercial fishing should be permitted to continue in the bay, that the activity had “long been part of the rhythm of life in the park,” and that “park values should include people who can make part of their livelihood there, and leave hardly a ripple.” The paper pointed to the fact that the NPS had no evidence that commercial fishing had harmed the national park or that natural processes had been impaired for present or future generations. Commercial fishing, it said, was not akin to “strip mining or clear-cutting to the edge of salmon streams.” In contrast to the heated rhetoric of Senator Murkowski and Representative Young, however, the *Daily News* stated with civility that the NPS was not the enemy, but asserted that it was, in the case of Glacier Bay, “just wrong.”⁸⁶⁵

Meanwhile, Senator Stevens’s promise on the Senate floor to address the losses of processors and communities was taken very seriously by those directly and indirectly affected by the closures and phase-outs. The group included crewmembers, processing workers, and support businesses throughout Southeast Alaska. It also included the State of Alaska, which collected fishery business taxes that, after being shared with the city in which it was collected, amounted to 1.5 percent of the ex-vessel value of fish caught.^{CCCCC} In mid-February 1999, Governor Knowles sent letters to Alaska’s Congressional delegation expressing his desire to work with them in “formulating a plan outlining economic relief” for small businesses and communities affected by the closures and restrictions on commercial fishing in Glacier Bay.⁸⁶⁶

While the DOI had pledged to work with Alaska’s delegation to address the issue, it lacked the information to make a credible

^{CCCCC} The State of Alaska collected a fishery business tax equal to 3% of the amount paid by processors to fishermen for fish. Half of this amount is then remitted to the city in which the tax is collected, ostensibly to be used to construct and maintain fisheries-related infrastructure.

calculation of the losses. The job fell to ADF&G, which had considerable information, some of which it could not share due to confidentiality regulations. Acting in the interest of those affected by the closures and phase-outs, ADF&G tasked staff economist Jeff Hartman to determine what those losses might total in Southeast Alaska. In a draft report dated March 16, 1999, Hartman determined that compensation for the losses would range from \$16 million to \$23 million.⁸⁶⁷ His work, though never finalized, would serve as the basis for legislation two months later. The NPS later expressed confidence in Hartman's analysis.⁸⁶⁸

On March 4, Senator Stevens introduced S. 544 ("An original bill making emergency supplemental appropriations and rescissions for recovery from natural disasters, and foreign assistance, for the fiscal year ending September 30, 1999, and for other purposes"). By March 23 the bill had passed the Senate and included several Glacier Bay provisions added by Stevens. Perhaps the most important provision expanded the eligibility period for the Dungeness crab buyout program by two years. Two fishermen, Matt Metcalf and Rodney Selvig, both with very substantial histories and dependence on the fishery, were the primary beneficiaries, which had been included at the request of Randy King. King was in charge of the Dungeness crab buyout program and had a solid understanding of the fishery. Another Glacier Bay provision prohibited the NPS from implementing new commercial fishing regulations for a period of 60 days after the final rule had been published. This would preclude awkward "non-enforcement" situations such as with the February 1999 Tanner crab fishery. A final provision required the NPS to provide partial compensation to eligible Dungeness crab fishermen who had not received full compensation by June 15, 1999.⁸⁶⁹ As of June 15, 1999 the wilderness waters of Glacier Bay were officially closed to commercial fishing.

In early 1999 it became apparent that legal requirements and accounting procedures would delay the NPS's ability to provide full compensation to the six Dungeness crab fishermen who qualified to be bought out. On April 12, 1999, the DOI authorized initial (interim) payments of \$400,000 to each of those fishermen.⁸⁷⁰

Senator Stevens was also seeking a compensation package for those who were nega-

tively impacted by the restrictions on commercial fishing in Glacier Bay. An amendment was prepared that would have appropriated up to \$18 million to do so, but it was withdrawn before being offered on the Senate floor because of objections by Senator Murkowski, who posed a fundamental question: "Do we want to try and keep Glacier Bay open under state management or do we want to pay the fishermen for not fishing?"⁸⁷¹ There was no question that Murkowski favored the former, but he did an about face after hearing from hard-pressed fishing interests and Alaska Attorney General Bruce Botelho. Botelho stated that the compensation package would not interfere with the state's efforts to preserve commercial fishing in Glacier Bay.⁸⁷²

This did not mean that Senator Murkowski would rest quietly on the Glacier Bay issue. On March 23, he introduced an amendment (rider) to S. 544 that would have prohibited the NPS from expending funds to implement closures or restrictions on commercial fishing (and subsistence fishing and gathering) in Glacier Bay N.P., save the Dungeness crab fishery closed by the previous October's legislation, until the long-simmering dispute over whether the Federal Government or the State of Alaska held title to the Park's submerged lands was settled in court. (Two days later, on March 25, 1999, S. 544 was incorporated into H.R. 1141, the "1999 Emergency Supplemental Appropriations Act," the Senate measure's companion bill in the House.)⁸⁷³ A *Seattle Times* editorial accused Senator Murkowski of "playing fast and loose," and characterized the senator's desired effect as being "a perpetual state of legal limbo and an environmental purgatory for a rare treasure."⁸⁷⁴ Despite its controversial nature, Murkowski's legislation was endorsed by Senator Stevens and also received a qualified endorsement by the Knowles administration. The "bottom line" for Governor Knowles was that commercial fishermen's incomes be protected either through a moratorium or compensation. If Senator Murkowski's moratorium amendment became the subject of a veto threat or was otherwise imperiled, he urged it be withdrawn in favor of Senator Stevens "comprehensive compensation package."⁸⁷⁵ Both Governor Knowles and Senator Stevens maintained that Glacier Bay's waters belonged to Alaska.⁸⁷⁶ Senator Murkowski's problem, however, was with his colleagues—both

Republican and Democrat—in Congress. Max Baucus (D-Mont.) pointed out that no one could be certain how long the court case might take, and that the real intent of the amendment was to rescind the compromise agreed to in the Senate in October.⁸⁷⁷ Irritated that he was revisiting an issue that had been settled, Senator Lincoln Chafee (R-R.I.) quoted Yogi Berra. Murkowski's ploy, he said, was "déjà vu all over again."⁸⁷⁸ Nevertheless, by a 59-40 vote Senator Murkowski's rider was attached to the spending bill. Some construed this rider as the second half of a possible win-win situation for Glacier Bay fishermen: other than the Dungeness crab fishery, Murkowski's rider would keep Glacier Bay open to commercial fishing, while Stevens's efforts might provide an insurance policy that would authorize compensation should commercial fishing in Glacier Bay ever be terminated. Others thought the result might be a moratorium on commercial fishing closures without the elimination of compensation—fishermen, in a sense, would be paid to fish. Still others were concerned that at the end of the day the result might be no fishing and no compensation.⁸⁷⁹

Environmental groups paid close attention to the funding bill and to the efforts of Alaska's senators regarding Glacier Bay. Murkowski's was not the only rider on the bill, but it may have caused the most alarm. In late April a group of nineteen "extremely concerned" environmental groups ranging from Friends of the Earth to SEACC beseeched President Clinton to insist that Congress provide him with a bill free of "anti-environment" riders. The Glacier Bay rider topped their list.⁸⁸⁰

Though he would likely have done it without the environmental groups' request, Clinton, as he had done before, promptly threatened to veto the entire spending bill if Murkowski's rider was not removed. In all, it was political maneuvering at its best. As Randy King had written a little earlier, "We're all along for the ride now."⁸⁸¹

On May 11 the legislation went into conference committee. As lead Senate conferee, Ted Stevens was in his element. At the request of Senator Murkowski, Stevens took the virtually unprecedented act of granting Murkowski (who was not a member of the committee) an opportunity to defend his rider in the conference committee. Among Murkowski's harshest critics was Representative Ralph Regula (R-Ohio), who chaired the House Appropriation Subcommittee on Interior, Environment

and Related Agencies. Regula said that he was troubled that "after a great deal of trouble by the Alaska delegation last year, we finally worked something out on this. This repeals a portion of what was agreed to last year."

Senator Stevens, sporting the Incredible Hulk tie that he wore on special occasions to signal his willingness to do battle, angrily defended Murkowski's rider. His effort was futile. On May 13, the Murkowski amendment was killed by unanimous vote of House conferees, who feared the veto of a crucial spending bill.⁸⁸² Despite the broad opposition to his efforts, a riled Senator Murkowski vowed to continue the legislative fight with separate legislation, and to "keep coming back until we win."⁸⁸³

When the legislation emerged from conference the following day, \$23 million had been "emergency" earmarked to "compensate Dungeness crab fisherman, fish processors, fishing crew members, communities and others negatively affected by restrictions on fishing in Glacier Bay National Park."⁸⁸⁴ Another \$3 million had been added to the \$5 million Dungeness crab fishery buyout fund.

The conference report was debated in the Senate on May 20. John McCain (R-AZ) took the conferees to task for adding "emergency" provisions to the bill without going through the proper channels and larding it with "non-emergency, garden-variety, pork-barrel spending." High on his list of complaints was the Glacier Bay "special-interest project" earmark.⁸⁸⁵ Though Senator Stevens's name may have been on the earmark, he had not acted alone. The \$26 million appropriation—the price tag for closing Glacier Bay to commercial fishing—had been negotiated between Stevens's office and the Clinton administration, which was represented by Assistant Secretary of the Interior Don Barry.⁸⁸⁶ The cost was made more palatable by the fact that the Federal Government was running a substantial budget surplus.

The legislation was passed by Congress (Senator Murkowski voted against it, in part to protest the House's rejection of his Glacier Bay amendment), and when President Clinton signed it on May 21, 1999 he noted that Congress had "...removed or modified certain objectionable riders that, for example, would have blocked our efforts to protect the sensitive waters in Alaska's Glacier Bay."⁸⁸⁷

Robert Barbee, NPS Alaska Region director, congratulated Interior Assistant Secretaries

Don Barry and John Berry even before the legislation had passed Congress:

Just a quick note to express our profound gratitude for your efforts on behalf of Glacier Bay in resolving the commercial fishing issue. We simply wanted to let you both know how much we appreciate the role you played and how well you played it. In no small way the future of Glacier Bay as a world class National Park and 'Marine Reserve' is due to your effectiveness.⁸⁸⁸

Mr. Barbee also sent a letter thanking Randy King, who probably understood the Glacier Bay commercial fishing issue better than anyone in the NPS, and who for nearly nine years was the agency's somewhat reluctant soldier on the front lines of this highly controversial and emotional issue.⁸⁸⁹

In addition to appropriating compensation and buyout funds, the 1999 legislation required that the \$23 million be distributed under a program developed with the concurrence of the State of Alaska. It retained the expanded eligibility for the Dungeness crab fishermen buyout and the provision for partial compensation to those Dungeness crab fishermen who had not been fully compensated by June 15, 1999. The legislation also required the NPS to publish a final rule on commercial fishing before September 30, 1999, and prevented the agency from restricting commercial fishing in the non-wilderness areas closed to that activity under the October 1998 legislation until the beginning of the year 2000 season for the respective fisheries.

As a floor manager for the legislation, Senator Stevens provided some guidance to the NPS on how Congress (at least the floor managers) expected the compensation plan to be implemented. "For this program to be done right," said Stevens, "it must be done jointly with the State of Alaska." This was necessary because the state had data on fishermen's income that would be needed to determine appropriate compensation. Stevens thought the NPS could implement the program jointly with the state under a cooperative agreement or simply contract the state to do so. The costs of administering the program would be deducted from the \$23 million, but "Under no circumstances should

administrative expenses be more than 5% of available funds," said the senator.⁸⁹⁰

Still unable to accept that commercial fishing was being phased out of Glacier Bay, an obstinate Senator Murkowski made good on his vow to continue the legislative fight, despite extremely slim prospects for success. On June 17 Murkowski introduced a new amendment to undermine Senator Stevens's compromise of the previous year and make a joke of the compensation package signed into law less than a month previously. His amendment involved an 18-month moratorium during which the NPS would not be allowed to spend any money to implement commercial fishing regulations in Glacier Bay N.P., save those on Dungeness crab. During the 18-month period a joint study would be conducted by NPS and ADF&G to determine the environmental impacts of commercial fishing (and subsistence gathering) in Glacier Bay. NPS funds would be used to pay for the study.⁸⁹¹

Murkowski's amendment—unpopular, to be sure—fell easy victim to the give and take of the legislative process that began with H.R. 1141, the emergency legislation that carried Senator Stevens's Glacier Bay compensation language. In May 1999, the Kosovo and Southwest Asia Emergency Supplemental Appropriations Act, 1999 was being debated in Congress.⁸⁹² Senators Robert Byrd (D-WV) and Peter Domenici (R-NM) had added amendments to the legislation that provided loan guarantees to the steel and oil and gas industries. House conferees made it clear that these non-germane amendments were unacceptable, and would doom the important bill. In the interest of moving the legislation along, Senator Stevens gave his word to Byrd and Domenici that if they withdrew their amendments, he would promptly roll them into a single freestanding bill that was acceptable to House leaders. Consistent with the Kosovo legislation, House leaders had made it clear that they would consider the loan guarantee bill only if it was free of non-germane amendments. The amendments were withdrawn and the emergency Kosovo funding was soon secured, though on a different bill.⁸⁹³ Undeterred by Stevens's promise to his colleagues, Murkowski attempted to add his Glacier Bay amendment to the loan guarantee legislation. Senator Stevens was determined to remove it, and the junior senator from Alaska reluctantly acknowledged his amendment's

fate: “I am disappointed to learn that my senior colleague intends to table the amendment.”⁸⁹⁴ Senator Stevens was successful at doing so, but made it clear that it was not for any reason other than to keep his promise to Byrd and Domenici.⁸⁹⁵ Free of unacceptable amendments, the Emergency Steel Loan Guarantee and Emergency Oil and Gas Guaranteed Loan Act of 1999 became law in August 1999.⁸⁹⁶ Murkowski’s amendment was never resurrected, but this failure to get unpopular, long-shot legislation enacted did not deter him from similar efforts in the future.

After nearly two decades of controversy, the official prohibition of commercial fishing in Glacier Bay’s designated wilderness waters took effect on June 15, 1999.⁸⁹⁷ As a statement of cooperation with the NPS, ADF&G published a special news release listing NPS regulations for fishing Tanner crab in Glacier Bay; it did not do so, however, until early 2001.⁸⁹⁸

Because the buyout program had not been completed before June 15, 1999, the date the Dungeness crab season was scheduled to begin, the NPS permitted Dungeness crab fishing in Glacier Bay’s non-wilderness waters to continue until September 30, 1999. (This closure date was somewhat misleading, because the Dungeness crab fishery was managed by ADF&G, which set the summer season’s closure date as August 15.) The closure of wilderness waters didn’t leave much room for fishermen, but Tom Traibush was ready for the season in Glacier Bay, such as it was. To the author’s knowledge, no one had ever set commercial crab gear in Bartlett Cove’s inner lagoon, which was small and shallow and could only be entered at high tide. Located on the south side of the lagoon are the NPS’s offices, where Superintendent Tomie Lee occupied the office with the best view. At the season’s opening Traibush set about a dozen pots in the lagoon. It was an in-your-face gesture to the superintendent, which was made all the more so because Traibush used large, bright red buoys instead of his usual small, dull-colored ones. The NPS at that time was still mooring some of its boats at the dock in the inner lagoon. The buoys and buoy lines were something of an inconvenience to navigation, and Randy King asked Traibush to remove them. Traibush did so, and later reported that he actually caught a surprising number of crab.

The last commercial crab pot was hauled from Glacier Bay on August 15, 1999. Under the Glacier Bay legislation of October 1998 and May 1999, twenty-one Dungeness crab fishermen applied to be bought out. Of the nine who were successful, five were based in Gustavus. Together the nine had been licensed to fish a total of 2,100 pots.

The buy-out of one of the Gustavus fishermen was the result of an unintended loophole in the hastily-written legislation. Naomi Sundberg had fished with her husband, Tom Traibush, in Glacier Bay’s wilderness waters for enough years to meet the requirement specified in the legislation. In 1997 and 1998, she held a Dungeness crab permit of her own that she used to fish the vessel *Wavelength*. Sundberg applied to be bought out, but her application was rejected by the NPS based on the fact that she had fished under Traibush’s permit, not her own.

The NPS’s interpretation of the legislation was that an applicant was required to have fished under his or her own permit. The actual wording of the legislation, however, stated simply that an applicant was required to have fished for the qualifying years “pursuant to a valid commercial fishing permit.” Sundberg argued in an administrative appeal that fishing under Traibush’s permit met the requirement of the law, but the NPS affirmed its original decision. She then took the issue to federal court. The court agreed with Sundberg, ruling that the NPS had “erroneously denied” her compensation, and ordered the NPS to promptly complete the processing of her application.⁸⁹⁹

Based on the Court’s decision in this matter, at least one fisherman who had applied for a lifetime access permit (LAP) using documented time as a crewmember was awarded an LAP.

The closure of Dungeness crab fishing in Glacier Bay had an almost immediate effect on Gustavus’s two small seafood processing businesses. Icy Passage fish, which had depended almost completely on Dungeness crab, shuttered its operation in 1999. Point Adolphus Seafoods, which was more diversified, continued to operate. Without Dungeness crab, however, that operation was only marginally profitable, and the company bought its last fish in the spring of 2002.

Glacier Bay’s “Submerged Lands” Issue Resolved

With the passage of H.R. 1141, the controversy over commercial fishing in Glacier

Bay N.P. was essentially settled, save one very fundamental issue: the State of Alaska still claimed title to Glacier Bay's waters and thus jurisdiction over its fisheries. Though the state's claim, to some, appeared to be more bluster than substance, certainty was impossible without a decision by the Supreme Court. The basis of the state's claim was the Submerged Lands Act of 1953, in which Congress generally ceded certain "submerged lands" to the states.⁹⁰⁰ By definition, submerged lands in Glacier Bay N.P. are those lying beneath marine waters extending from the line of mean high tide seaward to a line three geographical miles distant from the coast line.⁹⁰¹ In the State's view, whoever had jurisdiction over the submerged lands also had jurisdiction over the supervening water column and marine resources contained therein.

An exception to the Submerged Lands Act was made for submerged lands that were "expressly retained by or ceded to the United States when the state entered the Union."⁹⁰² Since Glacier Bay N.M. had been established prior to Alaska's statehood, the Federal Government retained jurisdiction. The State of Alaska claimed otherwise. Congress offered no direction. Echoing provisions contained in earlier (though failed) legislation, the October 1998 compromise Glacier Bay legislation passed by Congress tactfully avoided the issue of jurisdiction. It stated that "Nothing in this section is intended to enlarge or diminish Federal or State title, jurisdiction, or authority with respect to the waters of the State of Alaska, the waters within the boundaries of Glacier Bay National Park, or the tidal or submerged lands under any provision of State or Federal law."

Submerged lands in Glacier Bay became an issue shortly after Congress designated certain marine waters in the Bay as wilderness under ANILCA. The state was concerned over the ramifications of the designation on established uses of these waters, particularly commercial fishing. It was the opinion of assistant attorney general for Alaska Robert Price in 1982 that "the submerged lands [within Glacier Bay NP] together with the natural resources within such lands and waters covering those lands are the property of the State of Alaska and subject to its management jurisdiction." If Congress was unwilling to delete the wilderness designation of these waters, Price suggested the state could

take the issue to the Supreme Court.⁹⁰³ The official state opinion was less certain: "there is a substantial legal question concerning the correctness of the presumption" that submerged lands and the supervening water column are within the Glacier Bay N.P.⁹⁰⁴

The NPS clearly did not agree with Price's opinion that the NPS had no jurisdiction over the waters of Glacier Bay. The same year Price made his claim Gary Vequist, resource manager at Glacier Bay, unequivocally wrote that "All the marine waters of Glacier Bay are under the proprietary jurisdiction of the federal government," that the waters of Glacier Bay had been "expressly retained" by the Federal Government when Alaska became a state, and that the "land and water areas included within the Glacier Bay National Park have remained under the supervision, management, and control of the NPS."⁹⁰⁵ Vequist was likely quoting a DOI solicitor's opinion.

The issue seemed to be at an uneasy rest when Steve Cowper, Alaska's governor from 1986 to 1990, considered but did not initiate legal action.⁹⁰⁶ In 1990, Walter Hickel was elected Alaska's governor, a position that he had held for about 28 months during the late 1960s before becoming President Richard Nixon's Secretary of the Interior. State sovereignty was an issue so close to Governor Hickel's heart that he judged his Department of Law by the simple measure of how many suits it had filed against the federal government. With regard to Glacier Bay, Hickel faced a challenge that none of his predecessors had faced: the NPS had initiated a formal process to phase out commercial fishing. Nevertheless, Hickel did not directly challenge the NPS's jurisdiction over the waters of Glacier Bay. Carl Rosier, ADF&G's commissioner during that time, explained why: "We have also considered judicial relief. However, as you know, the courts are expensive and slow, and the outcome of a legal challenge would be uncertain. If we were to pursue litigation, Alaska's residents would suffer significant losses as they are denied their livelihoods and traditional subsistence activities."⁹⁰⁷ (Rob Bosworth, later deputy commissioner of ADF&G, said in 1997 that litigation could take a minimum of 15 years.⁹⁰⁸) This was a candid acknowledgement of the situation the state faced, one that Rosier hoped could be resolved by legislation. Privately, many within the state government thought the chances of

succeeding were very slim, and some on the governor's staff went so far as to characterize a potential lawsuit as a "loser."⁹⁰⁹ Nevertheless, while the State of Alaska, its Congressional delegation, and industry boosters largely maintained an air of certainty over the issue, the fact that a legal challenge was not mounted by the Hickel administration, which had both the inclination and the provocation, spoke volumes.

When Tony Knowles succeeded Walter Hickel as Alaska's governor in 1994, the NPS's Glacier Bay commercial fishing rule-making process was stalled pending the possibility of legislation. Though the state publicly asserted "unequivocal claim" to title of submerged lands in Glacier Bay, it was the desire of the Knowles administration to avoid litigation.⁹¹⁰ The governor's hand was forced into his "option of last resort," however, when it became apparent that some sort of restrictions on commercial fishing were in Glacier Bay N.P.'s future.⁹¹¹ The legal effort was not proactive, but a last-ditch, politically-motivated response to pressure by fishermen and others to "do something."⁹¹²

With the NPS's renewed attempt to phase out commercial fishing in Glacier Bay under Jim Brady, pressure had increased on the state to challenge the federal government's jurisdiction over Glacier Bay's waters. Pressure increased again with the October 1998 Glacier Bay legislation. Senator Murkowski was upset with the restrictions on commercial fishing, and with Representative Young joined a number of commercial fishermen to urge the state to assert jurisdiction over the waters of Glacier Bay.⁹¹³ On March 4, 1999, Governor Knowles announced the state's formal notice of intent to sue the NPS. Knowles said the state had no option but to sue, and that the decision to do so was intended to arrive at a final and stable resolution of the questions of ownership and management jurisdiction in Glacier Bay. The legal process required that once the notice was filed, the state had to wait 180 days before actually filing the lawsuit.⁹¹⁴ Senator Murkowski commended Knowles, stating that "We will not trade compensation for access."⁹¹⁵

Despite the skepticism of some administrative officials, the state did receive some encouraging legal advice, including counsel

from John Roberts, who would later become Chief Justice of the U.S. Supreme Court. And as they developed their arguments, attorneys in Alaska's Department of Law came to believe in the case. They knew, however, that they faced an uphill battle.⁹¹⁶

On November 26, 1999, the State of Alaska filed suit in the U.S. Supreme Court asserting legal title to the submerged lands of all of Southeast Alaska on four counts. Three counts primarily involved the Tongass National Forest. The fourth was specific to Glacier Bay.⁹¹⁷ "It's time to resolve, once and for all, the issue of where federal jurisdiction ends and state jurisdiction begins in Southeast Alaska," said Governor Knowles.⁹¹⁸ The governor's comment seems to reflect a degree of ambivalence regarding in whose favor the court might rule.

Despite numerous statements to the contrary, the Knowles administration understood that the state was unlikely to prevail on the Glacier Bay count of the lawsuit. According to former Alaska Attorney General Bruce Botelho, since Glacier Bay had been carved out of the Tongass National Forest, to prevail on the Glacier Bay count, the state also faced the difficult task of establishing its ownership of the Tongass' submerged lands.⁹¹⁹ To mitigate its potential losses and save face, the state proposed a settlement with the federal government. A meeting was held between negotiators for the State of Alaska and the U.S. Department of Justice (DOJ) on November 15 and 16, 2001. At this meeting, state negotiators proposed a settlement in which the state would confirm the federal government's title to Glacier Bay's submerged lands. In exchange, they suggested that a reversal of the phase out of commercial fishing in Glacier Bay's non-wilderness waters would meet their needs.^{DDDDD} With the support of the Park Service, DOJ rejected the state's proposal as unacceptable, noting that it would be legislatively controversial and perceived as a "political" settlement rather than a settlement of merit reflecting the broad public interest.⁹²⁰

In the early summer of 2002, Secretary of the Interior Gale Norton asked the NPS to reconsider the state's settlement offer. Norton's request may have originated with Drue Pearce, a former state legislator who had become

^{DDDDD} As what the NPS termed a "secondary interest," the State also wanted Glacier Bay opened to subsistence uses, particularly by the people of Hoonah.

DOI's representative in Alaska, and who was ideologically opposed to the phase out of commercial fishing in Glacier Bay. After brief consideration in which Glacier Bay superintendent Tomie Lee suggested that the state might settle for a liberalization of the LAP program, the NPS once again advised against accepting the state's offer.⁹²¹

Three years later, in June 2005, the Court ruled that the Federal Government had jurisdiction over Glacier Bay's submerged lands. In the Court's opinion, the "exclusion of the submerged lands would compromise the goal of safeguarding the flora and fauna that thrive in Glacier Bay's complex and interdependent ecosystem."⁹²²

Commercial Fisheries Compensation Program

The late spring in 1999 found the NPS gearing up to administer what became known as the "Glacier Bay Commercial Fishing Compensation Program." It was not a job the NPS wanted. Constructing and administering a compensation plan was bound to be a complex undertaking, and the Service had little in-house expertise. In the realm of commercial fishing, ADF&G, however, had expertise as well as the fisherman data needed to calculate compensation. Glacier Bay N.P. Superintendent Tomie Lee literally begged Senator Stevens's office to have the state (or about anyone else) develop and administer the compensation program.⁹²³ Lee perhaps did not know that John Katz, the state's representative in Washington, DC, had rejected a proposal to include wording in the May 1999 Glacier Bay legislation that would have required the compensation program to be developed and administered by the state.⁹²⁴ It was the state's fundamental opinion that the NPS had created the problem, and the NPS should deal with it.⁹²⁵ The state would provide fisheries data to help construct a plan, but offer its concurrence only when a satisfactory plan was developed.

The floor managers of the Glacier Bay legislation expected the DOI to expedite development of the compensation program so that "compensation can be distributed no later than the end of the fishing season."⁹²⁶ The Tanner crab season had already ended, but the end of the fishing season for halibut in 1999 was November 15. For salmon it was December 31. The expectation of the managers was unrealistic. The development of a fair and

comprehensive compensation plan would be time-consuming under the best of circumstances. It would require a comprehensive economic assessment, provision for public input (mostly meetings), time to prepare a draft plan that would then be subject to public review. Once the final plan was developed, claimants would need an adequate application period. This would be followed by a review of claims and a payment period. Complicating everything was the fact that the compensation plan was supposed to be developed and implemented during the fishing season, when the industry was busiest.

A major downside for the NPS in constructing and administering the compensation program was the controversy and emotion engendered in the entire issue. The NPS recognized early on that public involvement would be essential.⁹²⁷ Even if one accepted the closures and restrictions on commercial fishing, however, \$23 million is a lot of money to distribute in Southeast Alaska, and there was bound to be a lot of competition among fishermen and others to receive their "fair share." No matter how fairly the money was distributed, it was assumed that not everyone would be satisfied.

For the NPS staff at Bartlett Cove, constructing and administering the compensation plan would be a lot of work and hard emotionally as well. Many of the staff lived in the community, and they were friends and neighbors of the fishermen and others who had been affected by the closures and restrictions of commercial fishing in Glacier Bay. Because their work on the project might make it hard for them to live in the community, Tomie Lee chose to limit the number of staff involved, and she also worked to erect a "firewall" around the entire effort so those not involved, particularly those who made their homes in Gustavus, would not be "tainted."

Within 10 days of the passage of the Glacier Bay legislation, ADF&G had drafted a "concept outline" of a compensation program. The goal was laudable—to return, to the extent possible, individuals, firms and other entities directly or indirectly affected by the closures and restrictions on commercial fishing in Glacier Bay to their pre-phase-out level of welfare. As envisioned by ADF&G, claims would be divided into three "tiers" depending on when losses would occur. Those claimants who would suffer losses first (those dependent on the Dungeness crab fishery) would be com-

compensated first. Despite the fairly simple precedent set by the Beardslee Islands Dungeness crab fisherman buyout, ADF&G had a very complex vision of the form in which compensation funds might be disbursed: annuities, low-interest loans, extended unemployment insurance, training programs, grants for community facilities or projects, and fisheries research (including fisheries development). The fund was envisioned to be long term; an investment strategy and inflation proofing were concerns. Optimistically, ADF&G expected the NPS to begin paying out first tier claims on December 1, 1999.⁹²⁸ The little guidance that Senator Stevens had given the NPS was that administrative costs should not exceed five percent of the \$23,000,000 compensation fund. This calculates to only \$1,150,000, an amount almost certainly insufficient to administer the complex, long-term compensation program initially envisioned by ADF&G. Administrative costs for the relatively simple buyout of Dungeness crab fisherman averaged \$8,500 per claimant, less than two percent of what the claimants were paid.⁹²⁹ The general range of overhead costs for a more typical federal program, by contrast, is 10 to 35 percent.⁹³⁰

The staff at ADF&G had drafted the compensation program concept outline on June 1. It was quickly shared with Senator Stevens, who registered his strong disapproval. According to Stevens, the compensation program was not “a social experiment,” but a vehicle to put money in empty pockets.⁹³¹ Three days later a letter to Bruce Babbitt from Senator Stevens and Senator Robert Byrd (D-WV) pushed the NPS to consider a much more streamlined and expeditious approach. The senators urged the DOI to “work diligently to have a compensation program in place for those negatively affected by the time fishing is no longer permitted or as soon as possible in the case of processors, communities, businesses and others who may already be suffering from Dungeness crabbing in wilderness closures,” in order to bring an “equitable and expeditious conclusion” to all compensation matters. This didn’t leave much time: had Dungeness crab fishing in the Beardslee Islands not been prohibited, the season would have opened on June 15. Unlike Stevens’s earlier statement, the letter from the two senators said only that administrative costs be kept to a minimum.⁹³² The only way to accomplish this was to greatly

simplify the compensation program, with the fundamental goal being the distribution of the \$23 million compensation fund as fairly and expeditiously as possible.

Some Alaskans were definitely in a hurry. Pelican Seafoods, which was owned by the Kake Tribal Corp., was struggling. The company had made some unfortunate business decisions, its facilities were run down, and it was burdened with considerable debt. Kake Tribal wanted to sell the operation, but it could find no buyers. On June 14, Gordon Jackson, Chairman, President and CEO of Kake Tribal, penned a letter to Governor Knowles asking that the compensation process for Pelican Seafoods be expedited. Jackson claimed that he had “negotiated several custom processing contracts that minimize risks and all but assures a profitable season if we have sufficient capital to start-up.” According to Jackson, the receipt of a “modest portion of the compensation for which Pelican Seafoods will certainly qualify” would guarantee a profitable season.⁹³³

Pelican Seafoods was asking for special consideration. The state’s position on such requests was to be supportive, but not to advocate individual claims.⁹³⁴

Senator Stevens was also apparently contacted, and in response, he promptly asked the NPS to provide interim compensation to processors who had purchased Dungeness crab from the Beardslee Islands. The NPS was receptive to his request. A July 1 news release by the NPS notes “expedited partial compensation to Dungeness crab processors.”⁹³⁵ On July 29, the NPS published a notice in the *Federal Register* detailing interim compensation application procedures. Interim compensation was limited to Dungeness crab processors who had purchased Dungeness crab from either the Beardslee Islands or Dundas Bay wilderness areas for at least six years during the period 1987 through 1998.⁹³⁶ These included Icy Passage Fish, Pelican Seafoods, Point Adolphus Seafoods, and Taku Fisheries (Juneau). The formula used to calculate interim compensation was very simple: each processor’s average yearly purchase of Dungeness crab from Glacier Bay N.P. for the 12 years 1987 through 1998 was multiplied by \$3. The interim compensation plan required the concurrence of the State of Alaska. It was submitted to the state on November 19, 1999 and received concurrence five days later.⁹³⁷ In February 2000, some

\$576,000 was distributed to the four eligible Dungeness crab processors.⁹³⁸ This was too late for Kake Tribal: the corporation had filed for reorganization under federal bankruptcy laws in October 1999.^{EEEE}

After meeting with state officials in late June 1999, the NPS on July 1 announced the framework for the compensation plan. Key components were opportunities for extensive public involvement, and the involvement of a private mediation firm and an economic consulting firm. The NPS presented a timeline for the development of the compensation program. It was very, very optimistic:

- eligibility criteria for lifetime access permits (LAPs) would be determined by mid-July;
- public notice of interim compensation in mid-July, payments made in the fall;
- newsletter and questionnaire to the public in early August;
- compensation program structure and eligibility criteria in place by late 1999.⁹³⁹

The criteria to be used to qualify fishermen for lifetime access permits needed to be addressed quickly. On December 11, 1998, as directed by Congress, the NPS had reopened the public comment on its 1997 proposed rule, including the changes wrought by the October 1998 Glacier Bay legislation. In the May 1999 legislation, Congress wanted to ensure a timely process, so it required the NPS to publish a final rule on commercial fishing in Glacier Bay no later than September 30, 1999. The NPS anticipated that the rule would take effect the following day with the opening of a 12-month LAP application period. One year later, on October 1, 2000, no one who had not been issued an LAP would be permitted to fish commercially in Glacier Bay.

As it worked out, the NPS published an interim rule on August 2, 1999, and provided a 45-day public comment period.⁹⁴⁰ The State of Alaska complained bitterly that the comment period needed to be extended because the rule had been published during the height of the fishing season, “the worst possible time for fishermen” to have any opportunity to comment.⁹⁴¹ Exacerbating this, the NPS had been forced to delay mailing copies of the proposal to fishermen and other concerned citizens

for three weeks because government regulations required the mailings to be printed by the Government Printing Office (GPO) or a GPO-approved contractor. The state’s concerns were ignored, but the final rule was not published until October 20, 1999, about three weeks later than Congress had stipulated. This schedule lapse did not delay the implementation of October 1, 2000 restrictions.

Eligible fishermen were to be grandfathered into three fisheries: trolling for salmon, longlining for halibut, and pot and ring-net fishing for Tanner crab. As one would expect, the public’s comments on eligibility requirements covered the spectrum from extremely restrictive to extremely liberal.⁹⁴² While there was some early talk by DOI officials of basing a fisherman’s eligibility for LAPs on the 1997 proposed rule to phase out commercial fishing in Glacier Bay—which was participation in a fishery for six of ten years—the staff at Glacier Bay N.P. favored a very liberal granting of permits: anyone who could document a single landing in the relevant fishery in Glacier Bay would be eligible.⁹⁴³ Such a program would be easy to administer and would minimize ill feelings. As well, given that many of those who would be eligible were thought to no longer actively fish in Glacier Bay, the liberal approach would result in little additional fishing effort.⁹⁴⁴ The State of Alaska desired an even more liberal approach; an LAP should be granted to anyone who currently owned a permit to fish for Tanner crab, halibut, or troll salmon, as well as anyone who had any history of commercial fishing in Glacier Bay.⁹⁴⁵ These approaches were rejected at the DOI’s Washington, DC office by Don Barry, Assistant Secretary of the Interior for Fish and Wildlife and Parks.⁹⁴⁶ Barry favored a considerably more restrictive approach. He may have been concerned that if he accepted the state’s liberal approach he would be perceived by the environmental community as having “sold out.”⁹⁴⁷ As well, he may have been concerned about setting a precedent. The final rule on LAPs, published in the *Federal Register* on October 20, 1999, was an intra-department compromise. For the troll salmon and Tanner crab fisheries, fishermen were required to prove three years’ participation in Glacier Bay proper during the 10-year period 1989 through 1998. For the halibut fishery, fishermen were required to prove two years participation in Glacier Bay proper dur-

^{EEEE} Kake Tribal emerged from bankruptcy in February 2002.

ing the 7-year period 1992 through 1998. The 7-year qualifying period for halibut was based in large part on the establishment of Glacier Bay proper as a statistical sub-area in 1992.⁹⁴⁸ Provision was made for the temporary emergency transfer of an LAP in the case of “illness or disability of a temporary, unexpected and unforeseen nature.”⁹⁴⁹

At first issuance, 165 individuals were awarded LAPs, some for more than one fishery. The distribution was, by fishery: 112 halibut, 64 troll salmon, 35 Tanner crab.⁹⁵⁰ Under the NPS’s Glacier Bay 1996 vessel management plan, all vessels entering Glacier Bay during the summer months (June 1 through August 31) were required to have an entry permit. For commercial vessels engaged in commercial fishing, the LAP served as the entry permit. LAPs are renewed every five years as long as the individual stayed active in the fishery.

Though the LAP issue had been officially settled, Glacier Bay Superintendent Tomie Lee continued to lobby to have the LAP qualifying requirements substantially liberalized. In the summer of 2002 she noted two criticisms of the existing system: Glacier Bay was perceived as a “private fishing hole for just a few,” and many elders and older fishermen in Hoonah had been denied LAPs because they had quit fishing or had not fished during the qualifying years and thus could not fish in their ancestral homeland.⁹⁵¹ Officials at the Department of the Interior informed Lee that the issue had been dealt with. The case was closed. End of story. This situation is illustrative of the gulf that sometimes exists between DOI’s headquarters, which has the final say on designing regulations and those in the field who actually implement them. In 2005, however, the NPS re-opened the application process, and, as of December 2006, there were 7 applications pending.⁹⁵²

In addition to closing the wilderness areas in the Beardslee Islands and upper Dundas Bay to commercial fishing, the October 1998 legislation also closed other areas to fishing. Johns Hopkins Inlet, Tarr Inlet, Reid Inlet and Geike Inlet were all closed. In addition, the legislation closed the upper reaches of the bay to most fishing—the West Arm north of 58 degrees, 50 minutes north latitude, and the East Arm north of a line drawn from Point Caroline to the east

side of Muir Inlet—with the exception that the Arms were open for “winter” king salmon troll fishery during the period October 1 through April 30.^{FFFF} Since the vast majority of salmon trolling in Glacier Bay was historically focused on catching transitory king salmon during the winter season, the agency reasoned that this fishery could continue.

NPS regulations provide for the granting of special-use permits to tenders (fish-buying vessels) to enter Glacier Bay proper, but only to service an authorized fishery. In recent years only Tanner crab have been tendered in Glacier Bay.⁹⁵³

In September 1999, the NPS and the State of Alaska formally agreed to cooperate in the timely development and implementation of the compensation program.⁹⁵⁴ The ADF&G’s role was to provide essential fishery information, subject to the limits of confidentiality statutes, and to provide concurrence on key aspects of the compensation program structure.⁹⁵⁵ The goal of the agencies together was to “optimize benefits of the \$23,000,000 compensation program to mitigate short and long term adverse economic affects of congressionally imposed restrictions on commercial fishing activities in Glacier Bay National Park.”⁹⁵⁶ The initial step of their plan was to obtain “information, suggestions, recommendations and ideas from the general public and particularly the affected public and communities on appropriate eligibility criteria, priorities, formulas, and allocations for the authorized compensation funding.”⁹⁵⁷

In the summer of 1999, the NPS detailed Rick Jones from Glen Canyon National Recreation Area to work at Glacier Bay N.P. as an interim administrator. His duties were to help establish the compensation program and to coordinate fisheries issues with ADF&G. Jones, who was not an Alaskan, had no experience in commercial fisheries, but was experienced in program coordination, communications, contracting, and community consensus building. He worked out of the modest Juneau Field Office, which was opened in 1999 and was dedicated specifically to dealing with the compensation program. The Juneau location was more accessible to the public than an office at Glacier Bay would

^{FFFF} Alaska’s winter king salmon season can be terminated by ADF&G prior to April 30 if the guideline harvest level (GHL) is reached. (5 AAC 29.080)

have been, and its location facilitated coordination with ADF&G. The office was located in a low-rent area, both to save money and to be less intimidating than a similar office in the Federal Building might have been.

Concurrently, and also at NPS expense, ADF&G hired Dick HofMann for a similar coordinator position. HofMann had 21 years experience fishing commercially in Southeast Alaska, primarily as a troller, and had for eight years been president of the Alaska Trollers Association.⁹⁵⁸

Envisioned was a process that involved a series of facilitated public meetings and workshops in Southeast Alaska. Given the emotion that surrounded the issue, objectivity and impartiality were very important. A number of people would not trust the NPS to be objective or impartial, and it was quickly decided to employ a neutral mediator/facilitator. In October, with concurrence of ADF&G, a contract was signed with RESOLVE, a non-profit organization with offices in Portland, Oregon and Washington, DC that specialized in the resolution of public policy disputes. RESOLVE's function in the public participation process was not to make recommendations, but to ask questions and to summarize and synthesize the views of stakeholders.⁹⁵⁹

RESOLVE was also tasked with hiring a consultant to provide an economic analysis on which to base the compensation program. The NPS and ADF&G together chose the McDowell Group, a Juneau-based economic research and consulting firm that had considerable experience in natural resource issues.

Abby Arnold was RESOLVE's lead person on the Glacier Bay program. One of her first steps in designing a public participation process was to interview by telephone some 40 individuals affected by the closures and restrictions on commercial fishing in Glacier Bay. Arnold wanted to hear their ideas, interests and concerns about what kind of public process would best serve to fairly and expeditiously distribute the compensation funds. As a result of these interviews, the NPS and ADF&G agreed with Arnold that the best way to proceed initially was to schedule informal community open houses and attempt to form a consulting group. Additional public involvement activities would be conducted on an as-needed basis.⁹⁶⁰ For those with access to

the Internet, the NPS's website was constantly updated with information on the fisheries and compensation program.

Informal open houses where individuals would have the opportunity to share their ideas and concerns with staff from NPS, ADF&G and the McDowell Group were scheduled in ten Southeast Alaska communities for January and February 2000.^{GGGGG} In August 1999, the NPS began publishing and distributing the newsletter *Glacier Bay Update* to provide the status of the compensation plan and other aspects of the Glacier Bay commercial fishing issue. The mailing list for *Glacier Bay Update* contained some 3,400 names.⁹⁶¹ In the December 1999 issue of the *Update*, the NPS gave notice that the development and implementation of the compensation plan was expected to take about two years.⁹⁶² Under this schedule, compensation payments would be completed by December 2002. Soon thereafter (February 17, 2000), however, a briefing paper for Secretary of the Interior Bruce Babbitt that seems to have been prepared in the NPS's Alaska Regional Office optimistically stated that payments would be made in the fall of 2000.⁹⁶³

The ten community meetings held in Southeast Alaska in January and February 2000 yielded a mixed bag of observations, suggestions, and opinions. Nearly every fisherman expressed concern and/or anger that they were being unnecessarily excluded from Glacier Bay while cruise ship traffic was increasing. A major concern of salmon and halibut fishermen was the loss of access to productive fishing grounds. Tanner and Dungeness crab fishermen were mainly concerned about increased competition on the grounds that remained open to fishing. More than any other community visited, those who attended the Petersburg meeting expressed the sentiment that they were not interested in compensation, they simply wanted to continue fishing as they always had.⁹⁶⁴

Between late April and the first of June, five open-to-the-public conference calls served to keep the public informed about progress being made by the McDowell Group on the economic assessment and to discuss and hear advice about technical issues relating to the compensation plan. In each call, twenty-five to forty individuals participated from eleven community sites. Abby Arnold, of RESOLVE, moderated the calls.

^{GGGGG} The communities in which open houses were held were: Angoon, Gustavus, Haines, Hoonah, Juneau, Kake, Pelican, Petersburg, Sitka, and Wrangell.

In late spring, the NPS was reminding fishermen that the deadline for applying for LAPs was October 1, 2000. It was also soliciting advice from the public on what might constitute fair and reasonable eligibility criteria for receiving compensation. The deadline for public comment on the compensation plan was November 30, 2000. Suggestions received before August 1 would be considered for inclusion in the draft plan that was scheduled to be distributed in mid-September. According to the NPS's schedule, the compensation plan would be completed and published in the *Federal Register* in January 2001.

Anticipated total administrative cost for developing and implementing the compensation program was \$925,000, \$317,400 of which was to cover ADF&G's expenses associated with the project.⁹⁶⁵ At the insistence of Glacier Bay superintendent Lee, administrative costs were paid from two sources: the residual of the \$3 million that had been appropriated in May 1999 for the buyout of Dungeness crab fishermen, and out of the general operating expenses for the Glacier Bay N.P. and the NPS regional office in Anchorage. Some costs not charged to the program were time dedicated directly to the program by the park superintendent, assistant superintendent, administrative officer, clerks, other park employees, regional office support staff, and the attorney of the Regional Solicitor's Office.⁹⁶⁶ To the NPS's credit, the \$23 million compensation fund was kept completely intact.

Contribution of Crewmembers

To the bureaucracies that regulate commercial fishing in Alaska, crewmembers are largely ignored. They are required to purchase a license, but other than that, these essential people are largely non-entities. As Alaska's limited entry program was configured, only the captains of fishing vessels received limited entry permits, despite the fact that a crewmember might have worked on the vessel every year that qualified the captain for a permit. The rules were the same for the federally-managed halibut IFQ program. Both limited entry permits and IFQs are marketable, and the rights that their ownership confers can be worth hundreds of thousands of dollars. For their critical part in the industry, crewmembers received nothing except payment for their day-to-day duties.

As the end of 1999 approached at Glacier Bay, Dungeness crab captains had largely been

compensated, and processors of Dungeness crab were scheduled to receive interim compensation. Sensing the injustice of being ignored, crewmembers who had lost their jobs because of the buyout and closure notified Senator Stevens of their predicament. Stevens's office in turn contacted the NPS, and learned that the NPS was reluctant to make additional interim payments until the compensation plan was developed.⁹⁶⁷ Senator Stevens was not satisfied with this answer, and in early December he sent a letter to the DOI requesting interim compensation for losses incurred during the 1999 fishing year for Dungeness crab crewmembers who had worked during any two of the years 1996 through 1998 for individuals eligible for the buyout. (Turnover among crewmembers is usually fairly frequent. The brief eligibility period best reflected those actually active in the fishery.) Stevens noted that he had been advised that individual crewmember losses for the 1999 fishing year were likely to be in the \$6,000 to \$10,000 range.⁹⁶⁸ The following month the NPS informed Senator Stevens that his request would be honored. Qualifying crewmembers would receive interim payments limited to \$10,000 per individual.⁹⁶⁹

Also in January 2000, the NPS decided, with the agreement of the state, that no additional interim payments would be made. There was concern among some involved with the development of the compensation plan that eligibility requirements for the plan would be established before the public process was complete, and that too much of the compensation fund would be distributed before the final program was developed and approved.⁹⁷⁰

In February 2000, Superintendent Lee wrote Senator Stevens to inform him that the NPS expected to begin accepting claims in January 2001.⁹⁷¹ This was about a year later than had been anticipated nine months earlier. And, as events would show, the date that Lee set would be far from the last time that the schedule was pushed back. The failure to meet deadlines wasn't due to incompetence or intransigence on the part of the NPS. It was due to the fact that the agency underestimated the difficulty of pushing this unique and complicated program through the federal bureaucracy.

Interim Compensation Redux and the Buy N' Pack Amendment

In the spring of 2000, Senator Stevens's office was under pressure to provide a second

interim compensation payment to those Dungeness crab processors and crewmembers who had qualified for the first payment. There was also pressure from elsewhere. David Bowen, owner of Buy N' Pack Seafoods in Hoonah, had written to Tomie Lee requesting an interim payment based on his purchases of Dungeness crab from Glacier Bay. Bowen's request was denied because the legislation that provided for interim compensation stipulated that only those processors that had purchased Dungeness crab from Glacier Bay for at least six of the years between 1987 and 1998 were eligible. Buy N' Pack had begun operating in 1994, and had purchased Dungeness crab from Glacier Bay for four years. On June 8, 2000 a frustrated Bowen sent a letter to the editor of the *Juneau Empire*. The paper printed the letter under the title "Unhappy in Hoonah." In it Bowen complained that his business, which he claimed processed "hundreds of thousands of pounds of Pacific Cod and Dungeness Crab from Glacier Bay," was being forced into bankruptcy because the NPS would not consider granting him interim compensation. He went on to "thank" Senator Stevens for "driving the last nail in the coffin for my business, my family and several other employees' lives."⁹⁷²

There is no doubt that Senator Stevens's sympathies were with those affected by the restrictions on commercial fishing in Glacier Bay N.P. The senator was frustrated at the slow pace of the compensation program, and his office was prodding the NPS to speed up compensation in any way it could.⁹⁷³ The senator was also rankled by the NPS's decision to make no additional interim compensation payments. Because the NPS had pushed back the anticipated date for completion of the compensation program, Stevens felt that additional interim payments were warranted.⁹⁷⁴ Since the NPS was not willing to honor a request by him for additional interim compensation, Stevens chose to force the agency to do so through legislation. The Military Construction Appropriations Act, must-pass legislation considered essential for national security, was at that time in conference committee. Despite the protests of Senator John McCain, Stevens inserted a special provision into the legislation that granted a second interim payment to Dungeness crab processors and crewmen. As well he added a provision that directed the NPS to pay interim compensation to Buy N' Pack Seafoods "which has been severely and

negatively impacted by restrictions on fishing in Glacier Bay National Park." The interim payment for Buy N' Pack Seafoods was to be for estimated 1999 and 2000 losses based on an average net income derived from processing product harvested from Glacier Bay fisheries from 1995 through 1998.⁹⁷⁵ The legislation was signed by President Clinton on July 13, 2000.

The NPS contracted the Mikunda, Cottrell & Co. accounting firm to calculate Buy N' Pack's average net income. It was a difficult chore: Buy N' Pack's accounting records for 1995 had been stored on a hard drive that was destroyed by water that was used to put out a fire in the company's office. There was no backup, and the company's accountant had moved and had left no forwarding address. Compounding this, Buy N' Pack consisted of multiple business operations that included a mechanic's shop, a welding shop and an equipment rental business. The company's bookkeeping practices made it impossible to separate the revenues and expenses of the various business operations. On top of everything else, Bowen submitted a number of fish tickets marked as representing fish caught in areas other than Glacier Bay, but he insisted that they actually represented fish caught in Glacier Bay. Mikunda, Cottrell estimated the company's income the best it could based on the information available.⁹⁷⁶ Based on this estimate, early in 2001 an interim payment of nearly \$110,000 was made to Buy N' Pack Seafoods.⁹⁷⁷

The use of estimated income to secure an interim payment caused Buy N' Pack something of a problem when it filed a claim under the Glacier Bay Commercial Fishing Compensation Program. The program required documentation, not estimates. The interim compensation paid to Buy N' Pack Seafoods considerably exceeded the losses that the company could document, and placed the NPS in the position of demanding a refund of more than \$100,000 in excess compensation.⁹⁷⁸ Buy N' Pack Seafoods was eventually spared refunding the money by a 14-word amendment quietly inserted in 2003 into the Interior appropriations bill for 2004 by Senator Stevens.⁹⁷⁹ The amendment stated that recipients of interim compensation in excess of their final compensation need not refund the excess. The provision was supported by the NPS, which wanted to extricate itself from an awkward situation. Four Dungeness crab vessel crewmembers who had received

excess interim compensation also benefited from this legislation.

Putting a Price on the Losses: An Economic Assessment

In about March 2000, Clark Millett replaced Rick Jones as manager of the Glacier Bay compensation and lifetime access permit programs. Millett had worked as a commercial fisherman for some 20 years, and had spent an almost equal amount of time working in various public sector jobs.^{HHHHH} In June 2000, Randy King, who had been involved in the Glacier Bay commercial fishing issue since arriving at Bartlett Cove in the spring of 1990, transferred to the NPS regional office in Denver. The same month King left, Superintendent Lee hired Jed Davis as deputy superintendent to assist with the workload.^{HHHHH} Despite his new position, King remained actively engaged in the Glacier Bay issue through the end of the year.⁹⁸¹

After submitting a draft for public comment in May, the McDowell Group completed the “Glacier Bay Compensation Plan Economic Assessment” on August 1, 2000. Within the limitations of the data available, the study measured the future losses that could be suffered by commercial fishermen, crewmembers, processors and their employees, businesses providing goods and services to fishermen and processors, and communities. It determined that approximately \$2.4 million in seafood had been harvested from Glacier Bay annually in the recent past.^{IIIII} The Tanner crab fishery, despite the short season, was determined to be Glacier Bay’s most valuable. Its annual value was approximately \$900,000. Tanner crab was followed by halibut (\$800,000), Dungeness crab (\$500,000), king salmon (\$100,000), groundfish (\$50,000) and king crab (\$20,000).⁹⁸²

Economic losses due to the termination and phase-out of fisheries in Glacier Bay would continue to occur over some 25 to 30 years or more as LAP holders retired or died. The economic assessment predicted economic losses 75 years in the future, which was effectively equivalent to “in perpetuity.” The McDowell Group determined that potential worst-case scenario losses ranged from \$28.6 million to \$51.6 million, depending on the discount (interest) rate used. Actual predicted losses ranged from \$23 million to \$40 million,

again depending on the discount rate used. The McDowell Group cautioned that it was “critically important” to recognize the uncertainty associated with its study. Data limitations, future actions by fishery managers, as well as the future condition of fish stocks and a host of other factors would determine actual losses.⁹⁸³

Given that the NPS had a finite \$23 million in the compensation fund, it was less interested in total losses than it was in the distribution of those losses between the categories of claimants. The McDowell Group information would be used to guide the distribution of compensation funds among the various categories. McDowell determined that nearly half the losses (48.9%) would be borne by harvest-related entities—permit holders, crewmembers and harvest-support businesses. Thirty-eight percent would be borne by processing-related entities, including the State of Alaska, which would collect less fish tax. The remaining 13.1% would be borne by communities.⁹⁸⁴

Draft Compensation Plan

The draft compensation plan was completed in October 2000. The initial ADF&G proposal for tiered claims had been dropped in favor of putting all claimants on the same as-yet-undetermined payment schedule. Compensation vehicles such as annuities, low-interest loans, extended unemployment insurance, training programs, and grants for community facilities or projects were dropped in favor of simple monetary compensation payments. Under the draft compensation plan, the NPS would distribute all compensation as soon as possible and without consideration of future generations.

The draft plan was based on the “presumption that the individuals most directly affected by current and future restrictions on commercial fishing in Glacier Bay are those with some recent history of participation in Glacier Bay fisheries.”⁹⁸⁵ To reflect “recent history,” the NPS chose the 10-year base period 1989 through 1998, the same base period as had been used for fishermen to qualify for LAPs in the troll salmon and Tanner crab fisheries. Any member of an affected group with any level of earnings from Glacier Bay commercial fisheries during that time period would be eligible for compensation. The NPS was restrictive, however,

^{HHHHH} Davis represented the NPS at numerous Gustavus Community Association meetings, where his exceptional candor was much appreciated. (Gustavus had no official city government until it was incorporated as a city in 2004.)

^{IIIII} The calculation was based on the annual first wholesale value of the different seafood products.

in what it considered an “affected group.” Congress had authorized compensation to fish processors, fishing vessel crew members, and communities as well as “others negatively affected by restrictions on fishing in Glacier Bay National Park.”⁹⁸⁶ The NPS basically interpreted “others negatively affected” as harvest and processing support businesses. Typical among these would be tenders, marine repair shops, air freight transporters, owners of commercial fishing vessels leased to permit holders, and “others” that could document a financial interest in commercial fishing in Glacier Bay.⁹⁸⁷ It seemed that a business not directly related to the fishing industry that suffered because of a reduction in economic activity because of the closures and restrictions on commercial fishing in Glacier Bay would not be eligible. The compensation fund would be distributed to affected groups according to the ratio arrived at in the McDowell Group’s economic assessment. Within those groups, individual claimants would be compensated in proportion to their “share” of what was interpreted as losses.

In summary, the draft compensation plan’s key provisions were as follows:

- Claimants would be required to show current participation in a fishery and be able to document activity in Glacier Bay during the 10-year base period, 1989 through 1998;
- Because of the difficulty of demonstrating actual losses, compensation would be proportional to past earnings from Glacier Bay;
- Compensation to permit holders would be adjusted for age because younger permit holders would be expected to have a longer career in a fishery and thus suffer greater future losses than fishermen close to retirement;
- Compensation to processors would be proportional to past marginal income from Glacier Bay production during the 10-year base period of 1989 through 1998;
- Compensation to communities would depend on several factors, including number of resident Glacier Bay fishermen and processors, proximity to Glacier Bay, and the economic diversity of the affected community;

- Limited entry permit holders in the Southeast Alaska Dungeness and Tanner crab fisheries would be compensated for predicted declines in permit values.

Two aspects of this plan complicated the issue: the consideration of age to determine fishermen’s compensation, and the use of marginal income to determine processor compensation. The consideration of a fisherman’s age in calculating fishermen’s compensation was an effort to fairly apportion future losses. Younger fishermen could be expected to have more future income than fishermen near retirement.⁹⁸⁸ Some argued, however, that this sort of formula should have applied to all claimants.

In choosing to use marginal income to determine processor compensation, the NPS underestimated the difficulty of calculating marginal income where catch data was vague and financial records sometimes non-existent. But others stated that commercial fishing enterprises were businesses. Individual vessels have different costs of operation. Per pound of fish caught, the net income of some is considerably higher than experienced by others. Why, they argued, shouldn’t the compensation of fishermen—as well as processors—be based on marginal income?

As the McDowell Group’s economic assessment was an estimate, the draft compensation plan was only a framework for the process that would follow. It was all subject to the truthing that would occur when applications for compensation would be analyzed. Would actual applications reflect the division of future costs as portrayed in the environmental assessment? The NPS was not sure, and the agency retained the right to make adjustments when new information became available.

The draft plan acknowledged but did not take into consideration the value of LAPs, which, though not marketable, seems likely to increase as competition in Glacier Bay thins. It also acknowledged that since the compensation plan was based on past production, a few fishermen, probably all of whom would receive LAPs, would receive the bulk of the compensation money earmarked for their fishery.⁹⁸⁹

LAP holders found themselves in a win-win-win situation. They could continue fishing in Glacier Bay largely as they had, but with less competition, and would receive compensation money to boot. For those individuals who received large compensation payments—twenty

six permit holders each received more than \$100,000, and three of these each received more than \$500,000—“win-win-windfall” is perhaps a more accurate description. Some fishermen rationalized their good fortune: the more the NPS was forced to “bleed,” the less likely it would again attempt to terminate well-managed fisheries for preservationist ends. But there is an Achilles heel that may yet come into play: preservationist-minded individuals as well as advocates of government fiscal responsibility have noted that, since LAP holders have already been compensated, future congressional legislation could terminate grandfathered fisheries at no additional cost to taxpayers.

Furthermore, a halibut fisherman with an LAP for Glacier Bay could fish not only his IFQ poundage (see page ?), but that of the same (or permissible) category held by any other fisherman. For example, an LAP holder with, say, an IFQ quota of 2,000 pounds, could contract with another fisherman with 3,000 pounds of similar quota and catch a total of 5,000 pounds of halibut in Glacier Bay. (National Marine Fisheries Service regulations require the IFQ holder to be aboard the vessel.)

To provide the public with an opportunity to comment on the plan, a round of forums in Southeast Alaska communities were held in November 2000.

In December 2000, Ron Dick was contracted to succeed Clark Millett as manager of the Glacier Bay Commercial Fishing Compensation Program. Together with an administrative assistant, Dick worked out of the NPS’s Juneau Field Office.

Senator Murkowski’s Final Effort

Senator Murkowski was not idle while the NPS worked to design a compensation plan. He was still working to pass the “Glacier Bay Fisheries Act” (S. 501) that he and Senator Stevens had introduced in March 1999. (see page ???) Murkowski managed to keep the legislation alive, though it had little prospect of becoming law. Sensing it was the best he could do, Murkowski eventually removed the language to which the NPS and many of his fellow Congressmen objected, and in November 1999 the legislation passed the Senate. It was renamed the “Glacier Bay National Park Resource Management Act of 1999.”⁹⁹⁰ The commercial fishing provision of the bill

required that once funds were made available, the Secretary of the Interior, in consultation with the State of Alaska, the National Marine Fisheries Service, the International Pacific Halibut Commission and other affected agencies, was to develop a plan for a comprehensive multi-agency commercial fisheries research and monitoring program in Glacier Bay N.P. The goal of the program would be to evaluate the health of fisheries resources, and determine the effect of commercial fishing on productivity, diversity, sustainability and “park resources and values.” As chairman of the Senate Energy and Natural Resources Committee, Murkowski held an oversight hearing on August 10, 2000 in Juneau to hear testimony on Glacier Bay issues, among them the restrictions on commercial fishing and the implementation of the commercial fishing compensation program.⁹⁹¹ Murkowski was the only senator present, and the only speaker who did not support his position was Destry Jarvis, a senior advisor at the Department of the Interior.⁹⁹²

In attempting to build support for his various Glacier Bay bills, Senator Murkowski had continually tried to marry Native subsistence issues with the commercial fishing issue. No doubt Murkowski himself had some genuine sympathy and concern for the Hoonah people, but he seemed to have been strategizing that some in Congress who leaned against supporting the continuation of commercial fishing in Glacier Bay might be persuaded to do so out of sympathy for Glacier Bay’s Native people, whom he continually portrayed as having been wronged by a callous and insensitive NPS. Senator Murkowski’s early decision to try to build regional Native support for his legislation not with the Hoonah Indian Association, but through Sealaska Corporation (of which his reliable supporter, Robert Loescher, was CEO) may have hurt his effort. Sealaska Corporation was organized under the Alaska Native Claims Settlement Act as a for-profit commercial entity. The Hoonah Indian Association, in contrast, attempts to represent the Huna people’s spiritual and cultural as well as economic attachments to Glacier Bay.⁹⁹³

Two fishermen and Sealaska’s Robert Loescher were invited to speak at Senator Murkowski’s hearing. The Hoonah Indian Association was not invited. Johanna Dybdahl, HIA’s tribal administrator, complained to

⁹⁹³ Sealaska clearcut vast areas of forestland near Hoonah that it had obtained under the 1971 Alaska Native Claims Settlement Act. This fostered resentment against the corporation among some in Hoonah’s Native community.

Murkowski's office about routinely being left out of Glacier Bay discussions:^{KKKKK}

The Hoonah Indian Association would like it to be known that we take particular exception to discussions of Glacier Bay regarding, in specific, commercial fishing, with no involvement or meetings with the tribe. For the past year bills have been introduced and much discussion regarding the proposed closure for commercial fisheries has been brought before Congress. It has been a well documented fact in Congress that Glacier Bay is the traditional homeland of the Huna Tlingit yet our position has never been asked for [and] representation from our tribal government [never] been solicited.

Dybdahl went on to add that "Glacier Bay is not the traditional homeland of Sealaska Corp. To speak of Glacier Bay without consulting the tribal government is an affront. We are the directly affected tribal government and any discussion or proposals regarding Glacier Bay should come through the Hoonah Indian Association."⁹⁹³ For its part, the NPS considered Loescher's testimony at hearings to represent his views, not those of all Hoonah Tlingits.⁹⁹⁴

Senator Murkowski's hearing at Juneau was of little consequence. That fall, nearly a year after it was introduced and shorn of the provisions the NPS found objectionable, S. 501, the innocuous remnant of his final attempt to force his ideology on the NPS at Glacier Bay, was passed in the House by voice vote. The bill was signed into law by President Clinton on November 7, 2000.⁹⁹⁵ Congress, however, has never funded the research and monitoring program.

On May 14, 2001, Rob Bosworth and Richard Hofmann, representing the State of Alaska, hand delivered a letter of conditional concurrence with the compensation plan to the NPS. According to Bosworth and Hofmann, the plan "appears reasonable in the context of the overall program and statutory guidance."⁹⁹⁶ Soon thereafter, the NPS desk officer in Washington, DC hand carried a copy of the plan

to the President's Office of Management and Budget (OMB). OMB's approval was required to ensure that the plan was consistent with the president's budget and administration policies.⁹⁹⁷ To the great frustration of Glacier Bay superintendent Tomie Lee as well as individual claimants, there was absolutely no sense of urgency at OMB to approve the plan. Senator Stevens was asked to help the process along, but he was reluctant to interfere in what was a White House matter. Approval was finally received on August 9, 2001.⁹⁹⁸

On behalf of the State of Alaska, ADF&G Commissioner Frank Rue provided written concurrence with the final compensation plan on September 5, 2001.⁹⁹⁹ The plan's stated goal was "to fairly compensate those negatively affected within the constraints of the available funding."¹⁰⁰⁰ While its fundamentals were the same as in the draft, the final plan was considerably simpler in two respects: compensation to permit holders would be proportional to past earnings from Glacier Bay, with no consideration of age; and compensation to processors was proportional to past gross earnings—not marginal profit—from Glacier Bay production. There were, as well, several other significant changes:

- The basis on which community compensation would be determined was modified. Among the factors that would be taken in consideration were: number of resident Glacier Bay fishermen, proximity to Glacier Bay, percentage of residents' catch derived from Glacier Bay, and percentage of locally processed seafood that was from Glacier Bay.
- Under the category of "others negatively affected," support business were more broadly defined to include those who provided indirect goods or services to commercial fishermen or seafood processors who were dependent on Glacier Bay. Eligible were grocery stores, restaurants, and laundries. This category was also intended to encompass any individual or business not included in the other categories.
- A special program was set up to reduce the number of Tanner crab permits in Southeast Alaska to reduce the displace-

^{KKKKK} Early in 1998, HIA passed a resolution that requested "recognition [of HIA] as a tribal government ... be given in all regulations now and in the future regarding Glacier Bay." Copies of the resolution were sent to "the Alaska Delegation and all interested parties."

ment effect caused by restrictions in Glacier Bay.

Though not written into the compensation plan, it was understood by both the NPS and the State of Alaska that some of the economic assumptions in the plan might not hold up once applications and supporting documents were received. Money might have to be shifted between categories in order to provide compensation on an equal-ratio basis.¹⁰⁰¹

How Not to Not Buy Out Tanner Crab Fishermen

Because the ADF&G guideline harvest level for Southeast Alaska's Tanner crab fishery was expected to be reduced commensurate with the loss of Glacier Bay's production, all holders of limited entry permits for the Southeast Alaska fishery—whether they fished in Glacier Bay or not—were to be compensated. The Petersburg Vessel Owners Association (PVOA) calculated that 31 active Tanner crab fishermen had fished in Glacier Bay. Of these, ten would not qualify for LAPs and were immediately displaced. Twenty-one others qualified for LAPs but had lost access to some productive grounds in Glacier Bay that were now closed to commercial fishing. This added to the displacement effect. The PVOA suggested that compensation funds be used to immediately retire some permits. The suggested vehicle was an inherently fair low bid process in which willing permit holders would submit a "bid" value for their permit. The NPS would then select as many of the lowest bids as funds allowed.

The NPS was not keen on such a program, in part because Congress had mandated a compensation program for Tanner crab fishermen, not a buyout program. Dick Hofmann at ADF&G, however, was very insistent that there be a Tanner crab permit buyout program. Alaska's Commercial Fisheries Entry Commission (CFEC) felt likewise. CFEC had its reasons for supporting a buyout.

When the CFEC limited entry to the Southeast Alaska Tanner crab fishery in 1984, it issued two basic categories of permits. Where there was no question of eligibility, a permanent permit was issued. Where there were questions of eligibility, an interim permit was issued. Each interim permit was subject to review, after which it could be converted to a permanent permit or eliminated. As of 1999, fully 71 percent of the Southeast Alaska Tanner

crab permits were of the interim variety, and it looked to be awhile before the CFEC would be able to review them and make final determinations.¹⁰⁰² An NPS buyout program would do some of CFEC's work by eliminating a number of permits considered excess.

Under pressure by ADF&G and the CFEC, the NPS reluctantly agreed to incorporate a Tanner crab permit buyout program into the compensation program. In structuring the buyout, the NPS reasoned that if the Guideline Harvest Level (GHL) for Tanner crab in Southeast Alaska was reduced ten percent to reflect the loss of production from Glacier Bay, the value of limited entry permits would decline accordingly. Based on a GHL reduction of ten percent, an analysis by the McDowell Group determined the present value (year 2001) of the lost permit values to be about \$847,000. In its final compensation plan, the NPS set aside this amount from the fund designated for compensation of Tanner crab permit holders. The money would be used to reduce the number of active permits through a sealed low-bid process, but the permit reduction would be triggered only if a minimum of seven permits could be retired. A maximum of ten permits would be retired.

There was, however, a major complication. For buyout purposes, the NPS could not legally distinguish between permanent and interim permits. This raised concern among the Tanner crab fleet that individuals whose permit was likely to be denied might have buyout bids accepted. If the NPS purchased such a permit there would be less benefit to each of the remaining fishermen.¹⁰⁰³

The buyout nevertheless proceeded and ten "bids"—all but one for interim permits—were accepted, the highest value of which was \$80,000.¹⁰⁰⁴ Despite the fact that the proposal for the Tanner crab permit buyout originated with fishermen, it did not sit well with at least some crab fishermen. They were concerned that the buyout would take money that would have otherwise been split among all of the Tanner crab permit holders, and formalized their objections in the administrative appeal process. The NPS Alaska Regional Director's office saw merit in their reasoning, and, despite the fact that bids had already been accepted, the agency scuttled the buyout plan. The \$847,000 was returned to the compensation fund and distributed equally to all Tanner crab permit holders in Southeast Alaska.

But the story was not yet over. Seven of those whose buyout bids had been accepted jointly sued the NPS for breach of contract. With the concurrence of the NPS, the Departments of Justice and Interior agreed to settle the case out of court. The seven individuals who sued were paid their bid amounts, but were not, however, required to surrender their permits. Residual administrative funds from the Dungeness crab buyout were used to make the payments.¹⁰⁰⁵

The Compensation Process Begins

Notice was filed in the Federal Register on September 28, 2001 that applications for compensation would be accepted for a 120-day period, until January 28, 2002.¹⁰⁰⁶ After an analysis and recommendations by staff, the final determination for each application would be made by the park superintendent. Eligible applicants would then be provided with an estimated compensation amount that was subject to change once all administrative appeals were decided. The appeal period was to last 60 days. After the appeal hearings were complete, the NPS Alaska Regional Director would affirm, reverse, or modify the superintendent's decision and explain the basis of the decision in writing. Payments were to be made by electronic transfer after the administrative appeal process was completed.

The NPS received 837 applications prior to the January 2002 deadline and would receive 190 more before the compensation process was completed.¹⁰⁰⁷ In many cases, a single individual filed more than one claim. (Many fishermen, for instance, participate in multiple fisheries.) The claims ranged from less than one hundred dollars by a part-time processor employee, to a whopping \$200 million by the City of Petersburg.

With the applications in hand, the NPS recognized that there were, as expected, disproportionate compensation amounts in some categories. Most glaring was for groundfish processors, which, according to the plan, were scheduled to be awarded a total of \$575,000. Gross profits from the fishery, as documented by applicants, did not warrant nearly so much

compensation. If the compensation plan was adhered to, Hoonah Cold Storage would have received more than \$500,000 in compensation for \$5,623 in gross profits from processing groundfish. Likewise, Excursion Inlet Packing would have been compensated more than \$66,000 for \$728 in gross profits from groundfish processing. Common sense and the NPS's goal of fairness left no doubt that a change in the amount of compensation that was to be awarded to this category of processors was warranted.

At a meeting in early March, DOI solicitor Joe Darnell assured the NPS that it had, in the words of the compensation program manager Ron Dick, "some discretion" in moving funds around to correct for disproportionate compensation amounts among categories. With ADF&G's Dick HofMann watching, the NPS then made changes—some very substantial—to the distribution for each compensation category.¹⁰⁰⁷ The laudable goal was to provide equal-ratio compensation to all claimants.

A legal challenge later arose, however, over whether the changes amounted to a materially significant modification of the compensation plan that, without the formal concurrence of a high official of the State of Alaska, rendered it illegal. The District Court in Alaska ruled in 2006 that this was not the case, that ADF&G Commissioner Frank Rue had delegated the authority to HofMann to determine what would constitute a change to the plan that would require the NPS to seek additional concurrence. HofMann had always considered equal-ratio compensation to be integral to the compensation plan, so saw no need to for additional State of Alaska concurrence.¹⁰⁰⁸ The District Court's decision may be appealed.

In mid-April, 2002, the NPS announced that it had approved 531 claims and had initially denied 306, mostly due to incomplete applications. A total of 633 of the claims were ultimately approved. Of those, 230 were fishing permit holders, 198 crew members, 35 processors, 96 processor employees, 7 communities, 62 support businesses, and 5 were for lost fish tax revenues.¹⁰⁰⁹ All approved applicants were Alaskans, Alaska communities, or Alaska-based businesses. Of the \$23 million

¹⁰⁰⁵ The author knows of one fisherman, a troller with a considerable history in Glacier Bay, who—as a matter of principal—chose not to apply for compensation. He just wanted the right to continue fishing as he had in Glacier Bay, and to receive an LAP to do so.

¹⁰⁰⁶ The State of Alaska collects a 3% "raw fish tax" on most fish caught in southeast Alaska. Half of this is returned to the city in which it is collected to be used for the construction and maintenance of fisheries-related infrastructure, such as docks.

in the compensation fund, \$20.25 million was scheduled to be distributed to successful claimants, leaving \$2.75 million (12 percent) as a reserve for successful appellants.¹⁰¹⁰ Some in the NPS thought the reserve might be inadequate.

In May 2002, Frank Rue, commissioner of ADF&G, contacted Senator Stevens, citing an NPS analysis that demonstrated a need for an additional \$5.8 million in compensation funds. The funding was needed to make payments to applicants who “may be successful in the appeal process” without reducing what had been determined to be fair compensation to other applicants. Stevens replied that the federal budget was “proving to be extremely tight, making additional funds unlikely.”¹⁰¹¹

Rue’s was not the first request to increase the compensation fund. Some legitimately thought \$23 million would not be enough, while others simply felt that more was always better, that those who were affected by the closures and restrictions on commercial fishing in Glacier Bay were entitled to as much as they could get. After all, once the phase-out period was complete, Glacier Bay would be closed to commercial fishing forever. No matter what the real sentiments of the state were, it was politically popular in Southeast Alaska to advocate for an increase.

To discuss the size of the compensation package, Rob Arnberger, who had replaced Bob Barbee as NPS Alaska Regional Director, met with Senator Stevens in January 2001. The NPS is not legally permitted to lobby Congress, but the two were reported to have discussed a \$15 to \$20 million increase in the compensation fund, which Senator Stevens apparently supported.¹⁰¹² Then, in May 2001, Rob Bosworth and Richard HofMann sent a letter to the NPS. They noted that Jeff Hartman’s 1999 estimate that losses stemming from restrictions on commercial fishing in Glacier Bay would range from \$16 million to \$23 million, was “preliminary.” Bosworth and HofMann believed compensation should be based on the more comprehensive economic assessment produced by the McDowell Group, which predicted the present value of the actual losses from the closures and restrictions on commercial fishing in Glacier Bay to range from \$23 million to \$40 million. In the worst-case scenario the losses could exceed

\$50 million.^{NNNNN 1013} The appropriations for buyouts and compensation had thus far totaled \$31 million. Bosworth and HofMann urged the NPS to request from Congress a supplemental appropriation to provide an unspecified amount of additional compensation funding.¹⁰¹⁴ The funding was not forthcoming. Those affected by the restrictions and closures in Glacier Bay would have to make do with \$31 million. At least the state could point to having supported requests for additional money.

By the June 4, 2002 cut-off date, 367 individuals chose to administratively appeal their awards. Most of the appeals were relatively simple, but 43 were determined to be of medium complexity and 12 were difficult or very complex. Of those who appealed, 225 requested a hearing. Hearing officers from the DOI Office of Hearings and Appeals conducted 75 in-person hearings in Juneau in October and November, 2002. They also conducted 150 telephonic hearings. About half the appellants were represented by an attorney. (Four attorneys shared all the work.)

Once the hearings were completed, the hearing officers forwarded their recommendations to Rob Arnberger, NPS Alaska regional director, who had the final say in approving, modifying, or denying the appeals. Arnberger approved about 60 percent.¹⁰¹⁵

On March 19, 2003 the federal government electronically transferred \$23,000,000 into the bank accounts of 536 fishermen, support business operators, and communities that had been successful in filing claims against the NPS for the closures and restrictions on commercial fishing in Glacier Bay. Although the vast majority of successful claimants were closely related to the fishing industry, there were among them a liquor store in Petersburg, a tavern in Pelican, and a golf course in Gustavus. Two “highliner” halibut fishermen, one from Wrangell and the other from Petersburg, were each awarded more than \$500,000 in compensation. Both received Glacier Bay LAPs, and one continues to fish in Glacier Bay. The “losses” of these individuals consist of not being able to fish in places—such as the Hugh Miller Inlet complex—that were closed to commercial fishing by the 1998 legislation, and, because LAPs are non-transferable,

^{NNNNN} The NPS in August 1999 estimated that the economic effects (direct, indirect, and induced) of the establishment of LAP eligibility conditions established in the interim rule for Glacier Bay’s halibut, Tanner crab, and salmon troll fisheries had a present value of \$9.2 million. The agency considered this estimate to be conservative.

the inability to pass their knowledge and access along to heirs or new owners.

In April 2003, to correct administrative errors and overlooked applications, seven claimants were compensated a total of \$212,989. The payments were drawn from remaining administrative funds.¹⁰¹⁶

Not everyone was happy with the compensation program process or results, but dissatisfaction was manifested more in personal grumbling rather than in a substantial organized effort. The Central Council of the Tlingit and Haida Indian Tribes of Alaska complained very late in the process that the compensation program was “inconsistent,” that critical information regarding application requirements was inaccurately communicated by the NPS, and that applications had been denied to many individuals with “lifetimes of experience fishing in Glacier Bay.” As well, the council stated that many members of the local fishing community were skeptical “of the approval of so many applications from outside the area that are believed by local fishermen to be based on unsubstantiated claims.”¹⁰¹⁷ This concern may be addressed at some point in the future if the federal government’s General Accountability Office (GAO), which gathered some information early on, audits the Glacier Bay compensation program. On an individual basis, some halibut fishermen who do not have access to Glacier Bay resent the fact that some of their fellow fishermen had received compensation and were still able to fish in the bay. Additionally, there is at the time of this writing one active lawsuit, that of Dan Foley (Icy Passage Fish), who claimed he did not receive enough compensation. The District Court in Alaska found merit in his claim and ordered the NPS to recalculate his compensation amount.¹⁰¹⁸ The NPS is currently doing the recalculation.

Whether some individuals consider it fair or not, the fact is that the NPS listened closely to the public when it designed the Glacier Bay compensation plan. There was a comprehensive public process to inform the public and seek its input, a process that included numerous public meetings throughout Southeast Alaska as well

as meetings in Anchorage and Seattle. Within the constraints placed on it by Congress and with the concurrence of the State of Alaska, the agency by and large gave Southeast Alaska the compensation program its federal representatives demanded.

LAPs and the Future

Given the finite number of LAP holders, one would expect the commercial fishing effort in Glacier Bay to gradually decline as the holders retire or die.⁰⁰⁰⁰⁰ At least in the short term, this is not necessarily the case. In its LAP program, the NPS created an exclusive pool of fishermen who have the option to fish in Glacier Bay, where they know competition will be limited.^{PPPPP} This may have been a factor in the increase in the halibut effort and catch in Glacier Bay since 2002, a year after the LAP program effectively commenced. During 2002, 29 vessels fished halibut in Glacier Bay and caught some 254,000 pounds (dressed weight) of halibut. Two years later, 43 vessels fished, and the catch had increased to nearly 500,000 pounds. An additional factor contributing to the increased effort and catch may simply have been good fishing. As well, the fishing of multiple quota shares aboard a single vessel, and, to a much lesser extent, individual LAP-holding fishermen increasing their halibut quota shares, may have contributed to the increased harvest.

Management actions by the International Pacific Halibut Commission (IPHC) will—at least in the near term—likely reduce the commercial longline halibut catch in Glacier Bay. In 2007, due to lower halibut stocks, the Commission substantially reduced the guideline harvest level (GHL) in Area 2C, which includes Glacier Bay. A further reduction was made for the 2008 season, and the Commission has proposed an additional reduction for 2009. If, as expected, the proposed 2009 reduction is adopted, the total amount of halibut available for harvest by commercial longline fishermen in Area 2C for the 2009 season will be 4.47 million pounds—42 percent of the 10.63 million pounds that was available in 2006, and less than half the average catch limit for the decade 1997-2006.^{QQQQQ}

⁰⁰⁰⁰⁰ Effort does not necessarily equate with catch: in times of particularly good fishing, it may not take much effort to catch a lot of fish. Likewise, if there are no fish to be caught, no amount of effort can catch them.

^{PPPPP} Lending institutions might be more inclined to make loans to fishermen in possession of Glacier Bay LAPs than those without.

^{QQQQQ} The average halibut catch limit in Area 2C for the years 1997 through 2006 was 9.723 million pounds. The range during those years was 8.40 million pounds (2000) to 10.93 million pounds (2005).

The IPHC anticipates that halibut stocks will begin rebounding in about five years.¹⁰¹⁹

Salmon troll fishermen and Tanner crab fishermen do not have the same opportunity to increase their catch. There is a legal limit on the number of lines a salmon troller can operate. Short seasons and a limit on the number of pots a Tanner crab fisherman can fish preclude major increases in this fishery. More LAP holders may decide to fish in Glacier Bay, and some may upgrade their equipment, or fish more often or harder, but the general trend for these fisheries will be for the effort to slowly diminish.

NPS managers anticipate that, given the age composition of LAP holders, there will be little commercial fishing in Glacier Bay past 2040. The youngest person holding an LAP is currently in his mid-20s, but most are probably in their 40s and 50s.¹⁰²⁰ One factor that may skew this prediction is the halibut IFQ system. A person with both halibut IFQs and a Glacier Bay LAP need not own a boat, or even raingear. He could make fairly standard arrangements to fish with another vessel owner, and simply show up at the proper time and place with his paperwork and perhaps a coffee cup and something to read. No need to even help with the fishing.

Old age and infirmity will be a small barrier to the determined. Witness Albert Parker, an early homesteader in Gustavus. Parker in 1981 was old and ridden with disease and living in Anacortes, Washington. He knew he did not have long to live, and his desire was to die doing what he liked best: fishing commercially for coho salmon. He returned to Gustavus to do so. Parker caught quite a few cohos in the month or so he spent fishing and managed to survive the venture. His desire illustrates how important commercial fishing is to some. Perhaps there will be someone like Parker in Glacier Bay's future, someone determined to prolong—perhaps as a matter of principle—commercial fishing in Glacier Bay well beyond what actuarial tables might predict.

Conclusion and Final Thoughts

I've thought a lot about the commercial fishing issue and my role in it. While ultimately grateful to see Senator Stevens bring the issue to closure, the great disappointment was in not finding a negotiated solution that people and organizations, the

state and NPS, could work together to support and implement. That could have been so much better in so many ways. It was likely too much to expect. The parties had gone as far as they apparently were willing and the distance between positions was aptly described by Bill Brown as "the abyss." It didn't end the way many of us had expected, but perhaps it ended the only way it could – in Congress and the courts.—

Randy King, March 14, 2007.

After essentially ignoring commercial fishing for a half century, the NPS in the 1980s began an effort to establish Glacier Bay as a marine reserve and a more "pure" national park through the elimination of commercial fishing. Because of bureaucratic priorities, State of Alaska and public opposition, and political considerations, the initial effort was slow and timid.

That changed in 1988, when Marvin Jensen became superintendent. Jensen thought commercial fishing inappropriate in a national park, and in 1990 he began a serious attempt to terminate it under his agency's authority. His park-level effort soon garnered the support of the NPS and DOI hierarchy. The effort aroused tremendous controversy in Southeast Alaska. Resolutions were passed by communities and interest groups concerned over the potential loss of access to Glacier Bay's fishery resources. Alaska's Congressional delegation made several futile legislative attempts to settle the issue in a manner favorable to commercial fishing interests. Those of Senator Murkowski, in particular, were generally more ideological than practical and stood little chance of becoming law.

A long series of often confrontational and always frustrating stakeholder meetings were held that sought but never found consensus. Eight years and two Glacier Bay superintendents later, the NPS was well along in the process of achieving its goal. In the process that "resolved" the Glacier Bay commercial fishing issue, the stakeholders meetings unwittingly served an important purpose: they bought time while the relevant political and budgetary stars aligned.

At the time the Glacier Bay issue came to a head, Senator Stevens, through his seniority and political prowess and the electoral success of the Republican Party, was reaching what was

probably the pinnacle of his career in Congress. The federal budget was in surplus. And the Clinton administration was in its last years and wanted the issue settled on its watch. Senator Stevens recognized the inevitable, that the NPS had the authority to terminate commercial fishing in Glacier Bay and was prepared to do so promptly. Stevens used his position to pass legislation that made the commercial fishing closures and restrictions more acceptable in Southeast Alaska through the appropriation of some \$31 million in buyout and compensation funds, and the guarantee that fishermen with qualifying histories in the halibut, troll salmon and Tanner crab fisheries would have lifetime access to Glacier Bay. Probably more important to fishermen in the long run, Stevens also negotiated a guarantee that Glacier Bay National Park's outer waters would remain open to commercial fishing. Though purists might disagree, however, the NPS clearly got most of what it had set its sights on—the elimination, albeit phased, of commercial fishing in Glacier Bay proper.

Glacier Bay proper is today, by the definition of the National Academy of Sciences, a *marine protected area* (MPA)—“a discrete geographic area that has been designated to enhance the conservation of marine and coastal resources and is managed by an integrated plan that includes MPA-wide restrictions on some activities such as oil and gas extraction and higher levels of protection on delimited zones, designated as fishery and ecological reserves within the MPA.” If one ignores sport and personal use fisheries, within the Glacier Bay MPA there are 165 square miles of *fishery reserves*, where commercial fishing is precluded. Within the fishery reserves are four areas of congressionally designated marine wilderness that total 68 square miles. Motorized vessels are prohibited in the wilderness areas during the summer visitor season. These areas likely receive little, if any, sport or personal use fishing, and very closely fit the definition of marine *ecological reserves*—zones that protect “all living marine resources through prohibitions on fishing and the removal or disturbance of any living or non-living marine resource, except as necessary for monitoring or research to evaluate reserve effectiveness.”¹⁰²¹

Overall, Alaska's marine-based conservation system pales in comparison to its land-

based conservation system, which encompasses many millions of acres. Some conservationists and scientists believe that Glacier Bay, in combination with the Alaska Maritime National Wildlife Refuge,^{RRRRR} Copper River Delta State Critical Habitat Area, Kachemak Bay National Estuarine Research Reserve, and the Walrus Island State Game Sanctuary, should form the nucleus of an Alaska marine conservation system that eventually rivals the state's land-based system.¹⁰²²

Interest in establishing marine protected areas (MPAs) in Alaska remains high, though a serious effort to address the issue was cut off when Frank Murkowski replaced Tony Knowles as Alaska's governor. Under Governor Knowles and at the urging of Alaska's Board of Fisheries, ADF&G Commissioner Frank Rue in November 2001 had appointed a task force to develop a strategy for creating an MPA program in Alaska.¹⁰²³ Rue did so, and the task force produced a 91-page report, “Marine Protected Areas in Alaska: Recommendations for a Public Process,” in July 2002. The report showed something of a shift of ADF&G values toward those of the NPS: the task force acknowledged the need for the “maintenance of pristine ecosystem structure and function,” which, as some have pointed out, is similar to the preservationist interpretation of the Park Service's mandate.¹⁰²⁴ Furthermore, unlike earlier ADF&G rhetoric, the task force refrained from blaming the NPS for the closures and restrictions on commercial fishing in Glacier Bay, saying they were “based on the public's desire to exclude commercial extractive activities from a National Park.”¹⁰²⁵ The activities of the MPA task force were suspended under Governor Murkowski.

The Glacier Bay Commercial Fishing Compensation Program may have established a precedent. The *MPA News*, an information service on the planning and management of marine protected areas that is associated with the University of Washington's School of Marine Affairs, wrote that the program at Glacier Bay was “somewhat of an anomaly” nationally, but reported that “some fishing organizations have called for similar measures elsewhere in US waters.”¹⁰²⁶ Prominent among those organizations was the Pacific Coast Federation of Fishermen's Associations (PCFFA), which bills

^{RRRRR} The Alaska Maritime National Wildlife Refuge is spread along much of Alaska's coast and comprises some 4.9 million acres that includes, in the words of the U.S. Fish and Wildlife Service, “more than 2,500 islands, islets, spires, rocks, reefs, waters and headlands.”

itself as “by far the largest and most politically active trade association of commercial fishermen on the [U.S.] west coast (sic).”¹⁰²⁷ In its position statement on marine protected areas, the PCFFA stated that “Where significant reduction in fisheries is an unavoidable consequence of establishment of an MPA ... funding for the compensation of fishermen in proportion with the reduction of the fishery shall be part of the establishment of the MPA.”¹⁰²⁸

The two-phase legislative approach utilized at Glacier Bay—which may have politically been the only way for Senator Stevens and the administration to have addressed the issue—may have made it less economically efficient than it might have been. Had the legislation been done at one time, it would have been fair for fishermen in the three applicable fisheries to have been given a choice between receiving LAPs or compensation.

In one fishery there was really no choice. The king crab fishery was terminated in Glacier Bay, and in this fishery qualifying fishermen were compensated at the same rate as fishermen in the fisheries that also received LAPs. Additionally, in granting compensation fishermen’s ages could have been given consideration. Theoretically, older fishermen were able to document more landings and thus be eligible for more compensation than younger fishermen. Though they would not have as many landings to document and would thus receive less compensation than their older colleagues, younger fishermen would generally be expected to experience greater future losses. Even more fair, perhaps, would have been to include a compensation program in the Alaska National Interest Lands Conservation Act (ANILCA) in 1980. That legislation designated 41,367 acres of marine waters of Glacier Bay, including the Beardslee Islands, as wilderness that was to be managed in accord with the 1964 Wilderness Act, which precluded commercial activity. The few commercial fishermen who utilized Glacier Bay’s wilderness waters could have been fairly compensated and the issue settled, but perhaps this would have complicated the legislation beyond what was acceptable.

Bruce Babbitt was Secretary of the Interior for the most controversial years of the Glacier Bay issue. His comments in 2006 may provide a glimpse of how he viewed the process by which the Glacier Bay commercial fishing issue was resolved.

On June 15, 2006, President George W. Bush signed a proclamation that established the 140,000 square mile Northwestern Hawaiian Islands Marine National Monument. Under President Bill Clinton, Secretary of the Interior Bruce Babbitt had begun work on creating the monument in 1999, the same year the commercial fishing issue in Glacier Bay was resolved. The day the monument was proclaimed, Babbitt was interviewed on National Public Radio. His interviewer remarked that one provision of the agreement that facilitated the creation of the monument was that the small number of fishermen who would be displaced were to be compensated. Babbitt responded that this “Seems to be the American way ...gather a consensus in which everybody gets their piece ... call it extortion or compensation, as you will.”¹⁰²⁹ One has to wonder if his experience at Glacier Bay was on his mind.

There were four individuals who were key in resolving the commercial fishing issue in Glacier Bay. The first, and perhaps the most important, was park superintendent Marvin Jensen. It was his formal effort to phase out commercial fishing in 1991 that initiated the conflict over and, ultimately, the resolution of the issue. It could not have been so had the NPS not afforded him a great deal of autonomy. Commercial fisherman Tom Traibush was key because he helped steer the process by forcing Congress and the NPS to recognize the value of the Bay’s fisheries to himself and to the local community. Assistant Secretary of the Interior George Frampton figured prominently because he maintained the DOI effort to resolve the issue. Lastly, former Senator Ted Stevens, Alaska’s pre-eminent “go-to guy,” was important because he used his considerable power in Congress to make it all happen.

If one ignores the impacts of sport and personal use fishing, Glacier Bay is today well on its way to becoming one of the world’s premier marine reserves. To scientists it will become a valuable laboratory in which to study a largely undisturbed marine ecosystem. As well, it will provide something valuable to everyone concerned about the state of the world’s oceans: peace of mind in knowing that this substantial and productive body of water is largely protected.

This came at a cost that included \$31 million in buyout and compensation funds. But

unlike a sustainably-managed population of fish that can provide income in perpetuity, when the buyout and compensation money is gone, it is gone forever. And with it, future generations of Alaskans will not have the opportunity—at least in the commercial fishing industry—that was enjoyed by those of us who participated in Glacier Bay's fisheries.

Were the more than \$31 million price tag and the social and economic dislocations worth it? As was the case in the multitude of stakeholder meetings that sought to reach consensus on restrictions on commercial fishing in Glacier Bay, some would reply yes, that the Bay has finally been accorded the protective status it was due. Others would reply no, and maintain that commercial fishing had no significant impact on Glacier Bay's resources. And, if history is any judge, they will never, ever agree.